

**Forts, Writs and Logs:**

**A Reassessment of the Military, Political and Economic Dimensions of  
the Maine/New Brunswick Border Dispute, 1783-1843**

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A Dissertation Submitted in Partial Fulfillment  
of the Requirements for the Degree of

Doctor of Philosophy

in the Graduate Academic Unit of History

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This dissertation is accepted by the  
Dean of Graduate Studies

**THE UNIVERSITY OF NEW BRUNSWICK**

**April, 2010**

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*ISBN: 978-0-494-87671-8*

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*ISBN: 978-0-494-87671-8*

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## **DEDICATION**

To my wife, Carolyn,

without whose loving and constant support this would not have been possible.

## **ABSTRACT**

Although the history of the so-called disputed territory, especially the events that lead to the Webster-Ashburton Treaty (1842), has received considerable attention from academic historians, key facets of the dispute have not been adequately addressed. This has created an incomplete and misleading interpretation of both the nature and resolution of the dispute. By further examining the importance of the military route along the Saint John River to the British, the exercise of jurisdiction in the territory and the illegal cutting of timber this dissertation provides a fuller and different interpretation of the history of the disputed territory. An examination of the defended frontier reveals that the overriding concern of the British was to maintain control of the strategic route that ran through the disputed territory. Great Britain did not tolerate any actions by Maine or Massachusetts that would threaten the security of this route. British control of the route was finally gained through the Webster-Ashburton Treaty of 1842. A detailed study of the exercise of jurisdiction reveals that Great Britain believed that it had an understanding with the United States about the exercise of jurisdiction within the disputed territory. This understanding was shattered by the events of the Aroostook War of 1839. Following this, the disputed territory was effectively partitioned when Maine occupied the southern portion it. This set the conditions for the Webster-Ashburton treaty negotiations. An analysis of the cutting of trespass timber reveals that this problem has been greatly exaggerated in the literature. However Maine and Massachusetts frequently exploited this in an effort to maintain their claim to all of the disputed territory. It was the supposed cause of the Aroostook War and led to Maine's occupation of the southern part of the disputed territory, thus securing Maine's claim to at least part of the disputed



territory. The results of these three studies provide new knowledge and a new interpretation of these three issues to the historiography of the Maine/New Brunswick border controversy.

## ACKNOWLEDGEMENTS

It has been a long journey that is now completed. I would like to first acknowledge the support that I received from those closest to me – my family and friends – but especially my wife Carolyn. She gave me every encouragement throughout the process. I was fortunate to have an excellent committee. My supervisor, Dr. Bill Parenteau, and the other members, Dr. Marc Milner and Dr. Steven Turner, gave me much appreciated help and guidance during the reading fields. Dr. Parenteau then had the challenge of reading my drafts and helping me to improve them. He was more than equal to the task, to which I hope this dissertation testifies. My sincere thank you to all of you. It would be remiss of me to not mention the support that I received from Carole Hines and Elizabeth Adshade of the History office.

They say that the Ph. D. process is a lonely one. I can't agree with this because I encountered many helpful people as I conducted my research in libraries and archives in Canada, the United States and the United Kingdom. It was always a pleasure to actually meet them when I visited their organizations. Funding is always a concern and I was fortunate to receive research and conference grants from the Gregg Centre and the History department. This was very much appreciated. In many ways, I walked paths that had already been travelled. Without Geraldine "Gerry" Tidd Scott's excellent book Ties of Common Blood: A History of Maine's Northeast Boundary Dispute with Great Britain, 1783-1842, my research would have been considerably more difficult. Her book was my road map and it provided me with many valuable leads.

But without Carolyn, this might not have been completed. It was her suggestion that I embark on this journey and what an excellent idea it was. Thank you again for believing in me.

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**Introduction**

The Maine/New Brunswick border controversy lasted for a period of sixty years from the signing of the Treaty of Paris in 1783 until the endorsement of the Webster-Ashburton Treaty by the British Parliament in 1843. For the first half of the period, negotiations to resolve the controversy were relatively low key. However, this all changed in 1820 when Maine became a state and began to vigorously pursue its claim to all of the area, which was referred to as the disputed territory. This area included most of present day Aroostook County, Maine, Madawaska County, New Brunswick and Temiscouata County, Quebec. As a direct result of this, the Disputed Territory, and the events relating to it, played an important role in Anglo-American relations. In fact, the Aroostook War of 1839 had the very real potential of igniting a third Anglo-American war. Given the quiet, pastoral nature of the area today, it is difficult to comprehend that it was one of the major sources of international friction between London and Washington during this period as one diplomatic crisis followed another. Because of the importance of these events, this period merits a new study that will build on the existing historiography and provide new information and interpretations relating to previously unstudied dynamics of the border controversy.

Following an extensive review of the literature and the primary documents, it became apparent that there were three critical aspects of the Maine/New Brunswick border controversy that have not been studied to any significant degree. These are

the basis of this dissertation. The first area of study is the previously overlooked and underestimated strategic importance to the British of the line of communication through the disputed territory. This provided an all-season route linking London and Quebec that was a key part of the defence plans for British North America. Had Maine's land claim been upheld, the critical route would have been severed, an outcome that was unacceptable to the British. It will be shown that the British goal during this period was to maintain control of this route, which they accomplished. The second area is the exercise of jurisdiction by New Brunswick, Maine and Massachusetts in the disputed territory. This important topic has not been addressed in any detail in the historiography. Under the terms of the formation of Maine as a separate state in 1820, Maine and Massachusetts jointly claimed this area. The efforts to establish and maintain local control had an important effect on the conduct of the boundary negotiations between Great Britain and the United States. The British believed that they had an agreement with the United States whereby New Brunswick could exercise jurisdiction pending the settlement of the boundary issue. Maine rejected this agreement and much of its efforts during the period being studied were directed towards wresting jurisdiction away from Great Britain as a way to reinforce Maine's claim to the area. It will be shown that Maine was successful in this. Maine's occupation of the southern portion of the disputed territory following the Aroostook War of 1839 led to the partitioning of the disputed territory and set the conditions for the negotiation of the Webster-Ashburton Treaty in 1842. The third area considered is timber cutting in the disputed territory. The area was rich with stands of valuable white pine. Maine's protests about the cutting



of illegal or “trespass” timber resulted in several crises, the most important of which was the Aroostook War of 1839. However, while this subject has been written about in the historiography, it has not been studied in any detail. This study reveals an interesting interplay between the governments of Maine, Massachusetts and New Brunswick as each tried to control the cutting of timber. More importantly, it will be shown that the cutting of trespass timber was more of a *cause célèbre* than a real concern as the quantities cut were relatively small. Nonetheless, it was a critical issue during the border controversy.

The overall history of the border dispute is well known and has been the subject of many books and articles. As each of the three studies will have a review of the historiography pertaining to it, this will not be included in the introduction. Annex A provides a chronology of the key events while Annexes B and C are maps of the Disputed Territory. A short review of the topography of the area and the events of the border controversy will be helpful to understanding this topic. Starting with the topography, as shown on the maps, the St. John River and its tributaries drain the disputed territory. This river system also provided easy access to the area. The settlers and lumbermen moved into the territory along the river systems. There were two primary entrance points: up the St. John River from Saint John or down from the St. Lawrence via the Grand Portage that gave access to Lake Temiscouata and the Madawaska River. While agricultural products could be exported either way, the only practical way to float timber to market was down the St. John River to Saint John. This natural transportation system gave the British a decided advantage in their activities within the disputed territory as both entrance or exit points were

part of British North America. The Americans only had two options to access the disputed territory if they did not travel through New Brunswick. They could follow a roundabout route using the Allagash River or walk through the woods of eastern Maine. Both the British and Americans recognized the limitations of the river routes and undertook programmes of road building. The British focus was on the Great Road to Canada that roughly followed the route of the present Trans-Canada highway. The Americans pushed two roads north from Bangor to the disputed territory. The first was built as far as Houlton in 1828 and was later extended north to Fort Fairfield and Presque Isle. The second road, which was started in the 1830s, followed a westerly route to Marsardis and eventually to Fort Kent. These roads offset the British advantage in transportation to a degree and opened the southern parts of the disputed territory to American settlement. The American road-building programme within the disputed territory was a source of friction between the United States and Great Britain.

The historical narrative began in the 17<sup>th</sup> century. The border between New England and Acadia was never well defined, although the Kennebeck River in Maine was often thought to be it, as was the St. Croix River.<sup>1</sup> The border issue was not resolved following the conquest of New France in 1760 and was only poorly defined in 1783 by the Treaty of Paris that concluded the American Revolution. According to this, the boundary was to follow the course of the St. Croix River from

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<sup>1</sup> Raymond, W.O. The River St. John: Its Physical Features, Legends and History from 1604 to 1784 (Second Edition). Sackville, NB: The Tribune Press, 1950. p. 95 and Sprague, John Francis. The Northeastern Boundary Controversy and the Aroostook War. Dover, ME: The Observer Press, c1910. p. 5.

the Bay of Fundy to its source. From there, the boundary between the United States and British North America (the provinces of New Brunswick and Quebec) was agreed to be “From the North West Angle of Nova Scotia, viz. That Angle which is formed by a Line drawn due North from the Source of Saint Croix River to the Highlands along said Highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the northwestern-most Head of the Connecticut River”.<sup>2</sup> The Peace Commissioners had based this boundary on Mitchell’s map of 1755 that was quite vague as it pertained to the interior of present day Maine and New Brunswick.

The first task was to ascertain which river was the St. Croix as this name had gone out of common use. Of the two possible candidates, the Americans favoured the Magaquadavic (the Easterly river) and, for the British, it was the Schoodic (the Westerly River). The St. Croix Boundary Commission of 1796 identified the Schoodic as the St. Croix and the boundary line was run up the course of the river to its source at Monument and then due North from there.<sup>3</sup> The next problem was to locate the “highlands”. Until this was done, ownership of a triangle of land, comprising about 12, 027 square miles, remained uncertain. This area, known as the disputed territory, came under the protection, in trust, of the British pending a resolution of the boundary. A number of boundary commissions were formed to survey this area and determine where the highlands were. They were all

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<sup>2</sup> Jones, Howard. To the Webster-Ashburton Treaty. A Study in Anglo-American Relations 1783 – 1843. Chapel Hill, N.C.: The University of North Carolina Press, 1977. pp. 3 and 5.

<sup>3</sup> Burrage, Henry S. Maine in the Northeastern Boundary Controversy. Portland, ME. Marks Printing Houses, 1919. p. 56.

unsuccessful. Resolution of the boundary question did not progress very quickly as neither Great Britain nor the United States saw it as an urgent issue. The situation abruptly changed in 1820 when the District of Maine was separated from Massachusetts and became a state. Maine politicians were quite keen to claim all of the disputed territory for themselves and exerted considerable pressure on the United States government to support their claims. Their most significant victory was the forcing of the United States government to reject the arbitration ruling by the King of the Netherlands that had been jointly requested under the terms of the 1814 Treaty of Ghent. Maine continued to push its claims and this eventually led to the Aroostook War of 1839 that came perilously close to igniting a third Anglo-American war. Relations between the two nations were quite strained at the time over a number of issues including widespread support in the northern American states for the rebellions in the Canadas. Both national governments realized that the border issue had to be resolved and that the only solution was a negotiated settlement. This led to the enactment of the Webster-Ashburton Treaty in 1842, which was ratified by the United States in the same year and was endorsed by the British Parliament in 1843. While this resolved the international boundary, the long dormant question of the inter-provincial boundary between Canada (Quebec) and New Brunswick now came to the forefront. It had many of the elements of the recently settled international boundary dispute and was not resolved until 1851.

Determining the three areas of study to focus on was not an easy task. The review of the historiography quickly revealed that the historical narrative was well defined, beginning with Peter Fisher's Sketches of New Brunswick published in

1825 and updated in Notitia of New Brunswick for 1836.<sup>4</sup> The history of New Brunswick was next told in 1909 in James Hannay's History of New Brunswick.<sup>5</sup> Both authors supported the British position in the boundary dispute. Hannay put an edge on this when he wrote "The erection of the district of Maine into a separate state in 1820, gave a new impulse to American aggression in that quarter".<sup>6</sup> The idea of the Americans being aggressors in the boundary dispute is a continuing theme in the British version of events. The American version of events takes the opposite approach. Historical interest in the United States began with a paper read to the Maine Historical Society in 1879 by Israel Washburn, Jr. He set the standard for much of the later literature as he presented a picture of Maine fighting for her just rights against a hostile British government and an oft-times indifferent American one.<sup>7</sup> There was a flurry of American histories published between 1910 and 1920 as the centennial of the creation of the State of Maine approached. Consisting of three volumes, Maine: A History was published in 1919 and provided a good overview from earliest times to about 1900.<sup>8</sup> While it supports Maine's position in the boundary dispute, it does so in fairly dispassionate terms. Two other histories of the same period take a more passionate approach. Both Sprague's The

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<sup>4</sup> Fisher, Peter. Sketches of New Brunswick. Saint John: Chubb and Sears, 1825, reprinted as The First History of New Brunswick. Woodstock: Larsen Printing, 1980 and Notitia of New Brunswick. Saint John: Henry Chubb, 1836.

<sup>5</sup> Hannay, James. History of New Brunswick. St. John, NB: John A Bowes, 1909.

<sup>6</sup> Ibid. p. 425.

<sup>7</sup> Washburn, Israel, Jr. "The North Eastern Boundary". Read before the Maine Historical Society at Portland, May 15, 1879. Maine Historical Collection. 2<sup>nd</sup> Series, Vol. 1. CIHM/ICMH microfiche series; no. 34353.

<sup>8</sup> Hatch, Louis Clinton. Maine: A History. 3 Vols. New York: The American Historical Society, 1919.

Northeastern Boundary Controversy and the Aroostook War<sup>9</sup> (circa 1910) and Burrage's Maine in the Northeastern Boundary Controversy<sup>10</sup> (1919) were written to justify Maine's actions during the period from 1820 to 1842. These two books emphasize Maine's claim to all of the disputed territory. Sprague set the tone when he wrote about the "unlimited desire of the Anglo-Saxon to possess himself of all the territory of this earth within his reach".<sup>11</sup> Burrage was similarly adamant about Maine's rightful claim to all of the disputed territory. He stated that resolution of the boundary issue was a priority of the governors of Maine from the start and that Maine was not pleased with the lack of support that they received from the Federal Government in Washington.<sup>12</sup> Besides claiming the land, Maine was also concerned about encroachments being made on the timber in the disputed territory by trespassing British lumbermen.<sup>13</sup> As early as February of 1822, Maine sent an agent to the Aroostook area to protect the timber and to warn off trespassers.<sup>14</sup> This was quite a brazen move given that neither the United States nor Great Britain had formally claimed the territory because the boundary line was still under negotiation.

These three themes, namely that Maine was adamant and justified in claiming all of the disputed territory, that Maine was justified in trying to prevent the cutting of trespass timber in the territory and that the United States government was not fully supportive of Maine, came to dominate the historiography. They are

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<sup>9</sup> Sprague. Northeastern Boundary Controversy.

<sup>10</sup> Burrage, Henry S. Maine in the Northeastern Boundary Controversy. Portland, ME: Marks Printing House, 1919.

<sup>11</sup> Sprague. Northeastern Boundary Controversy. p. 3.

<sup>12</sup> Burrage. Maine. pp. 117 and 127.

<sup>13</sup> Ibid. pp. 117.

<sup>14</sup> Ibid. pp. 121.

continued in such books as H. George Classen's Thrust and Counter Thrust<sup>15</sup> (1965) and Howard Jones' To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843<sup>16</sup> (1977). While Classen studied the establishment of the American-Canadian border from the Atlantic to the Pacific, Jones focused on the domestic and international politics of Great Britain and the United States. The Maine/New Brunswick border controversy forms only a part of each book, yet the three themes come through clearly. Both authors placed the border controversy within the larger context of the Anglo-American relations of the period and the other tensions, such as the Rebellions in the Canadas and the Oregon Territory dispute, which could have brought the two countries to war. Francis M. Carroll, in A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842 (2001)<sup>17</sup>, discussed the same time period but with an emphasis on the activities of the various boundary commissions and their work in implementing the Articles of the Treaty of Ghent that related to resolving the border issues. While the main themes are restated, the strength of this book is in relating the difficulties experienced by the surveyors who tried to match the language of the Treaty of Paris to the topography.

Given the maturity of the historical narrative, it was decided to look for any significant gaps in the historiography. The most recent and succinct summary of the

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<sup>15</sup> Classen, H. George. Thrust and Counter Thrust. Don Mills, Ont.: Longmans Canada Limited, 1965.

<sup>16</sup> Jones. To the Webster-Ashburton Treaty: A Study In Anglo-American Relations, 1783-1843. Chapel Hill, NC: The University of North Carolina Press, 1977.

<sup>17</sup> Carroll, Francis M.. A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842. Toronto: University of Toronto Press, 2001.

dispute is found in Maine: The Pine Tree State from Prehistory to the Present when, in writing about the Aroostook War in 1995, Richard Judd said:

At the federal level, American politicians would have welcomed any reasonable settlement in the remote and inaccessible land. Few outside the state [Maine] were willing to risk a third war with Great Britain for these vague claims to wilderness territory. On the other hand, Maine and Massachusetts (which still owned alternate townships in Maine's unsettled territories) were important constituencies, and, especially in this era of states' rights, successive administrations drew back from any settlement unfavourable to them. Britain's position was similar: the boundary agitated the province more than it did the mother country.<sup>18</sup>

Writing eighteen years earlier, Jones, in To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843, had raised the issue of American honour, the perceived inability of the British to treat with the Americans as equals and American anglophobia as other contributing reasons for the drawn-out negotiations.<sup>19</sup> This is the current state of the historiography at the national level. While the goals of the United States have been addressed, it was clear that the British strategic goal of retaining control of the line of communication, or Grand Communications Route, was not included in the current historiography. This route, which passed through New Brunswick, provided the British with an assured, year round means of moving military despatches, mail and troops between London, Halifax and Quebec. It was of critical importance during the six months of the year or so when the St. Lawrence River was closed to shipping due to ice. Because of the importance of this route, it was seen that an academic study of it would make a significant contribution to the historiography of the boundary dispute.

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<sup>18</sup> Judd, Richard W., Edwin A. Churchill and Joel W. Eastman, ed. Maine: The Pine Tree State from Prehistory to the Present. Orono, ME: University of Maine Press, 1995. p. 347.

<sup>19</sup> Jones. To the Webster-Ashburton Treaty. pp. 87 and 160



The significance of this route has been essentially lost to history because of the focus on the Maine perspective on the boundary dispute. However, its importance was well known to the early historians. Hannay, in History of New Brunswick, discussed the importance of the route to the British during the American Revolution and then, in reference to the disturbances in the Madawaska Settlement in 1827, stated that “the object of the Americans was to carry their eastern boundary north of the St. John River, so as to cut off connection between New Brunswick and Lower Canada.”<sup>20</sup> However, he did not develop this theme any further. In Maine: A History, the reason for the British occupation of the Eastern District of Maine in 1814 was because “...the Cabinet in London desired an acquisition of territory which would make the direct route from Halifax to Quebec undeniably British.”<sup>21</sup> Otherwise, the strategic importance of this route is not mentioned again. Other writers have mentioned the importance of this route in passing but have not developed this line of argument in any detail. Discussions of the negotiations for the Webster-Ashburton Treaty frequently mention that control of the route was critical for the British but do not explain its importance. For example, Carroll in A Good and Wise Measure mentioned Lord Ashburton’s instructions from London to maintain control of the route but did not discuss the reasons in any depth.<sup>22</sup> This is understandable as his focus was on the conduct of the treaty negotiations. The only book that does focus on the importance of this route is this author’s The Road to

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<sup>20</sup> Hannay, History of New Brunswick, Vol. I. pp. 122 and 425.

<sup>21</sup> Hatch, Maine: A History, p. 74.

<sup>22</sup> Carroll, A Good and Wise Measure, p. 251.

Canada: The Grand Communications Route from Saint John to Quebec.<sup>23</sup> It was written as a popular history for the New Brunswick Military Heritage Project Series. Because of this, it does not receive the academic treatment that this subject deserves and which this dissertation will provide.

The objectives of the first study will be to describe the importance of the communications route to the British and explain why it was a key component of the defence plan for British North America. From the founding of New Brunswick in 1784 until the endorsement of the Webster-Ashburton Treaty in 1843, the British goal had been to maintain control of this route. In order to secure it, the British had to defend the frontier. To this end, military posts were built, roads were constructed and both civil and military settlements were established. These efforts were justified during the War of 1812 and the Canadian Rebellions of 1837 and 1838 when urgently needed troop reinforcements were sent over the route from New Brunswick to Canada during the winter months. When Lord Ashburton arrived in Washington in 1842 to begin the treaty negotiations, retention of the route was one of his main objectives.<sup>24</sup> He succeeded and his efforts were vindicated two decades later when the route was used to move urgent needed troop reinforcements from England to Canada in response to the Trent Affair of 1861. Again, it was done during the crucial winter months when the St. Lawrence River was closed to shipping.

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<sup>23</sup> Campbell, W.E. (Gary). The Road to Canada: The Grand Communications Route from Saint John to Quebec. The New Brunswick Military Heritage Series, Volume 5. Fredericton, NB: Goose Lane Editions, 2005.

<sup>24</sup> Bourne, Kenneth and D. Cameron Watt, ed. British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print, Part I, Series C, North America, 1837-1914, Volume 1, McLeod and Maine, 1837-1842. Frederick, MD: University Publications of America, 1986. pp. 247-249. Earl of Aberdeen to Lord Ashburton dated March 31, 1841.

Maintaining the security of the route was the major imperial objective during the Maine/New Brunswick border controversy. In addition to diplomacy, this was achieved through an active defence of the frontier between New Brunswick and Maine.

The subject of the second study, the exercise of jurisdiction by New Brunswick, Maine and Massachusetts in the disputed territory, spans the topic of both national and regional goals. While the question of jurisdiction frequently appears in the primary literature, it has not been brought forward into the historiography. Five different governments tried to exercise jurisdiction in the disputed territory, the key ones being the United States and Great Britain. These two nations appear to have reached an understanding whereby Great Britain, acting through the government of New Brunswick, would exercise jurisdiction in the area. This British “stewardship” was to be done in such a manner as to not prejudice the boundary negotiations. This was an impossible agreement to fully honour, as in order to exercise jurisdiction, New Brunswick had to introduce the structure of government. This study will trace the initial friction between New Brunswick and Quebec and later between New Brunswick and Maine, although Massachusetts also figures to a lesser degree.

The United States government appears to have been satisfied with the arrangement. The practical aspect was that law and order would be preserved in the disputed territory at no cost. Given the remoteness of the area from Washington, D.C., it made perfect sense. The State of Massachusetts and the District of Maine also had a stake in the area but, prior to 1820, showed little interest. This all

changed in 1820 when Maine became a state. Maine did not recognize any understanding between the Federal government of the United States and Great Britain that related to British stewardship of the territory. In fact, during the 1820s and 1830s, Maine worked to downplay the presence of British jurisdiction while trying to impose its own. This led to several notable encounters between the New Brunswick and Maine authorities. The most significant were the events in July of 1827 when John Baker raised an American-style flag and declared independence for the Madawaska area, the Maine sponsored town meetings of 1831 and 1842 and Greely's census of 1837. In each of these cases, British authority and jurisdiction were directly challenged by either American citizens living in the disputed territory or by agents of the State of Maine. The British reacted strongly as they were both taking their stewardship role seriously and were concerned about the effect that any change in the political balance might have on the ongoing boundary negotiations.

The British had cause to be concerned about the effects of any change in the political balance. Maine was finally able to change this in 1839 when it took control of the watersheds of the Aroostook and Fish Rivers. As a consequence of the Aroostook War, when both the United States and Great Britain seemed to be on the brink of open conflict, jurisdiction of the disputed territory was divided between Maine and New Brunswick.<sup>25</sup> This division of authority essentially shaped the course of the new boundary negotiations that resulted in the Webster-Ashburton Treaty of 1842. The final boundary was very much in line with that proposed by the

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<sup>25</sup> Sprague. Northeastern Boundary Controversy. p. 111. A copy of the agreement and the endorsements by Harvey and Fairfield is reprinted in the annexes to the book.

King of the Netherlands in his 1831 arbitration ruling but with a few modifications. While Maine lost control of the northern half of the disputed territory, it kept the southern portion that it had occupied, thus confirming the old adage “possession is nine points of the law”.

The objectives of the second study will be to examine the exercise of jurisdiction in the disputed territory by the five interested governments, two national and three regional. It will be demonstrated that there was an agreement, or at least an understanding, between the United States and Great Britain that the British would exercise jurisdiction or stewardship in the disputed territory pending the resolution of the border issue. The interaction between the agents of New Brunswick and Maine will be examined as the British tried to exercise their mandate and Maine tried to interpose her own. The stance of the federal government of the United States will be discussed as it tried to balance between continuing the border negotiations with Great Britain and supporting the demands of Maine. Neither the Americans nor the British were neutral in their exercise of jurisdiction. The British did all that they could to maintain control of the disputed territory in order to secure the Grand Communications Route. The Americans, especially in Maine, were equally determined to take control of as much of the disputed territory as possible in order to access the timber and the agricultural potential of the area. Maine’s occupation of the watersheds of the Aroostook and Fish Rivers following the Aroostook War of 1839 shaped the terms of the Webster-Ashburton Treaty and the eventual course of the international boundary. This means that the Aroostook War

played a far more important role in the history of the Maine/New Brunswick border controversy than has been previously recognized.

The genesis for the subject of the third study, land use and in particular the timber industry, also comes from Maine: The Pine Tree State from Prehistory to the Present. In it, Judd summarized the issues of the cutting of trespass timber and the presence of American settlers within the disputed territory who were claiming protection from Maine against the British/New Brunswick authorities.<sup>26</sup> These are presented as other factors in prolonging the border controversy. From both this book and others, it became clear that the timber industry was an important part of the history of the Maine/New Brunswick border controversy. However, when reviewing the historiography, it became apparent that very little had actually been written about it. There is certainly not a lack of information about the timber industry in British North America. There have been several overarching works that related the growth and importance of this industry. Perhaps the best overall view was provided by A. R. M. Lower in his three books on the timber trade: Settlement and the Forest Frontier in Eastern Canada, The North American Assault on the Canadian Forest: A History of the Lumber Trade Between Canada and the United States, and Great Britain's Woodyard: British America and the Timber Trade, 1763-1867.<sup>27</sup> These described the importance of the timber trade to the early Colonial economies and

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<sup>26</sup> Judd. Maine: The Pine Tree State. p. 348.

<sup>27</sup> Lower, A.R. M. Settlement and the Forest Frontier in Eastern Canada. Toronto: The MacMillan Company of Canada Limited, 1936, The North American Assault on the Canadian Forest. Toronto: The Ryerson Press, 1938, and Great Britain's Woodyard: British America and the Timber Trade, 1763-1867. Montreal: McGill-Queen's University Press, 1973.

gave a detailed description of the mechanics of the timber trade. They provide the background information that is essential in understanding the timber industry.

The industry in New Brunswick was fully examined by Graeme Wynn in Timber Colony: a Historical Geography of Early Nineteenth Century New Brunswick.<sup>28</sup> He detailed the development of the industry and its effect on the economy and society of New Brunswick. Both this book and a related article, “Administration in Adversity: the Deputy Land Surveyors and Control of the New Brunswick Crown Forest before 1844”,<sup>29</sup> described how the Crown Land Office, working through the Deputy Surveyors, tried to enforce the Crown Land regulations and the difficulties that they experienced in trying to prevent the illegal cutting of timber. However, there is little mention of the activities that took place within the disputed territory. Béatrice Craig has written at length about the Acadian/Canadien settlers in the Madawaska Settlement. Besides tracing their family relationships in painstaking detail, she has also written about their economic lives. This includes the effect of the lumber industry on the settlers of the Madawaska Settlement. One of her first articles on this subject was “Agriculture and the Lumberman’s Frontier in the Upper St. John Valley, 1800-79”.<sup>30</sup> This discussion has been built on and expanded in her recent books Backwoods Consumers and Homespun Capitalists and

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<sup>28</sup> Wynn, Graeme. Timber Colony: A Historical Geography of Early Nineteenth Century New Brunswick. Toronto: the University of Toronto Press, 1981.

<sup>29</sup> Wynn, Graeme. “Administration in Adversity: The Deputy Surveyors and Control of the New Brunswick Crown Forest before 1844”. VII, Acadiensis VII, I (Autumn, 1977): 49-65.

<sup>30</sup> Craig, Béatrice, “Agriculture and the Lumberman’s Frontier in the Upper Saint John Valley,” Journal of Forest History, Vol. 32, No. 3 (July 1988): 125-137.

The Land In Between: The Upper St. John Valley, Prehistory to World War I.<sup>31</sup>

While highly informative, Craig's focus was on only a narrow aspect of the timber industry.

Information about the timber industry in the disputed territory is a little better from the Maine perspective. Richard G. Wood provided an overview as part of his large monograph "A History of Lumbering in Maine, 1820-1861".<sup>32</sup> He described the activities of the Land Agents of Maine and Massachusetts as they worked together or at odds in selling land and timber permits within the disputed territory. But, again, the focus is on Maine as a whole and the disputed territory is of only passing interest. The only book that actually focused on the Aroostook area is Richard Judd's Aroostook: A Century of Logging in Northern Maine.<sup>33</sup> The activities in the Disputed Territory were addressed in a general manner as the bulk of the book examined the period from 1842 to 1931. Despite this, Judd did provide a good overview of the timber industry from the Maine perspective. This book is certainly an important reference for any discussion of this period.

However, none of the literature actually provides an overall perspective of the timber industry within the disputed territory. Without a detailed knowledge of this, it is difficult if not impossible to understand many of the actions that Maine, Massachusetts and New Brunswick took. The cutting of trespass timber was one of

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<sup>31</sup> Craig, Béatrice. Backwoods Consumers and Homespun Capitalists: The Rise of a Market Culture in Eastern Canada. Toronto: University of Toronto Press, 2009 and Craig, Béatrice and Maxime Dagenais, in collaboration with Lisa Ornstein and Guy Dubay. The Land In Between: The Upper St. John Valley, Prehistory to World War I. Gardiner, ME: Tilbury House, 2009.

<sup>32</sup> Wood, Richard G. "A History of Lumbering in Maine, 1820-1861." The Maine Bulletin, Vol. XXXVII, No. 7 (January) 1935.

<sup>33</sup> Judd, Richard W. Aroostook. A Century of Logging in Northern Maine. Orono, Maine: The University of Maine Press, 1989.



the major, if not the major, causes of friction between Maine and New Brunswick during the period being studied. The efforts by New Brunswick, Maine and Massachusetts to curb this illegal practice were an important contributing factor to many of the tensions that occurred during the boundary dispute. In a sense, it was also another aspect of the struggle to exercise jurisdiction. Because of this, it is difficult to understand why this gap exists in the historiography.

The objectives of the third study will be to describe the history of the timber industry within the disputed territory. This will include an examination of the interactions between the Land Agents of Maine and Massachusetts and the Deputy Surveyors of the New Brunswick Crown Land Office. The analysis of the magnitude of the problem of trespass timber will be of particular importance. As will be shown, the amount of timber cut was actually rather small. However, it loomed large in the political rhetoric of the time and was a convenient reason for protests by Maine and Massachusetts against the actions of New Brunswick. These protests culminated first in the 1825 British ban on timber cutting and second in Maine's occupation of the southern part of the disputed territory following the Aroostook War of 1839. Perhaps the most unexpected discovery was evidence of an organized "lumberman's resistance" in 1839 against the presence of the Maine posse in the Aroostook River valley. Overall, the political importance of trespass timber greatly exceeded its economic value.

While the Maine/New Brunswick Border Controversy lasted for sixty years between the signing of the Treaty of Paris in 1783 and the endorsement of the Webster-Ashburton Treaty by the British Parliament in 1843, the last three decades

– the 1820s, 1830s and 1840s – were the most critical. Events that were taking place in the remote lands of the disputed territory were discussed in Washington and London. As the controversy continued and Maine took an increasingly strident role, the border dispute threatened to spark a third Anglo-American war. Fortunately, collision was avoided and war was prevented. A growing maturity in international relations allowed Great Britain and the United States to resolve the border dispute by means of a negotiated settlement. This dissertation will further our understanding of this critical period in Anglo-American relations and will enhance our knowledge of Maine and New Brunswick history.

## **Study 1 – The Defended Frontier between Maine and New Brunswick**

“There can be no doubt that these communications [between Lower Canada, New Brunswick and Nova Scotia] are necessary in any view that may be taken of the defence of these provinces”. Arthur, The Duke of Wellington<sup>1</sup>

### **Introduction and Historiography.**

One of the main reasons that the Maine/Quebec/New Brunswick boundary dispute lasted for sixty years was because the British were determined to maintain control of the strategic overland communications route running through the disputed territory that linked Quebec to Halifax and London. This route was particularly important during the five to six months each year that the St. Lawrence River was impassable due to ice. The only way to send despatches or to move troops to the Canadas in winter was over this route, which became known as the Grand Communications Route. It is not surprising then that this route was the focus of much of the British military activity in and around the disputed territory. The priority for the British military was to secure the route. This was achieved through a combination of initiatives that included establishing a chain of military settlements along the route, maintaining a military presence either within or on the fringes of the disputed territory and providing support to the civilian authorities. American military activity had a different focus. The limited presence of the United States army was designed to maintain the *status quo* and to prevent collision between the

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<sup>1</sup> Wellington, The Duke of, ed. Despatches, Correspondence, and Memoranda of Field Marshal Arthur Duke of Wellington, K.G. Volume 2. London: John Murray, 1868. Reprinted by Kraus Preprint Co., Millwood, New York, 1973. p. 573. The Duke of Wellington to Lord Bathurst dated 6 December 1825. This comment was contained in the covering letter to a Report of the Committee of Engineers that was sent to examine and comment on the defences of British North America. He is referring to the communications route through New Brunswick.

British and the more exuberant citizens of Maine. It was only during the closing phases of the border controversy that Maine had a military and quasi-military presence in the disputed territory. Unlike the mainly defensive stance of the British and American troops, the actions of Maine's posse were definitely aggressive. Its purpose was to occupy as much of the area as possible and to hold it in anticipation of Maine receiving all of the disputed territory when the boundary issue was finally resolved.

The importance of the Grand Communications Route in the border dispute, and role of the British military in defending it, has received little attention in the published literature. The British were not the first to recognize the importance of this route. The First Nations had used it for centuries, both for peaceful travel and war. Later, the French used it as a key transportation link between the colonies of Quebec and Acadia. After Acadia became British following the 1713 Treaty of Utrecht, it became the crucial land route between Quebec and Louisbourg. In order to maintain control of the route, the French declared the western border of Acadia to be at Chignecto and built Fort Beauséjour to secure it. While the existence of the route was well known at the time of the boundary discussions, its importance to the British has been downplayed in favour of emphasizing the challenges of translating the boundary description in the Treaty of Paris to the actual topography. When the discussion of the boundary dispute widens from the surveying problems, it is the lumbering and, to a smaller degree, the agricultural aspects that are mentioned. The communications route receives only passing mention, if mentioned at all. Peter Fisher in The First History of New Brunswick (1825) briefly mentioned that the

military post at Grand Falls “connected and secured the communication with Canada”.<sup>2</sup> Moses Greenleaf in A Survey of the State of Maine in Reference to its Geographic Features, Statistics and Political Economy (1829) noted Britain’s failed efforts during the Treaty of Ghent negotiations to alter the boundary line in order to secure the communication route between Halifax and Quebec.<sup>3</sup> Other authors, such as Thomas Hodgins and Dudley Mills who wrote about Anglo-American diplomacy at the turn of the 20<sup>th</sup> century, did not mention the route at all.<sup>4</sup> In Canadian History Readings, Vol. 1 (1900), there is an article by W.F. Ganong titled “History in Boundary Lines – Illustrated by New Brunswick” in which he mentioned the danger of “cutting of communications between Nova Scotia and Quebec” but he did not attribute any great importance to it.<sup>5</sup> James Hannay, in History of New Brunswick (1909) did mention the efforts made by New Brunswick to have the boundary line adjusted following the War of 1812 in order to maintain the communication route and the failure to trade the captured portion of Eastern Maine for this. He went on to state that the Webster-Ashburton Treaty was beneficial for Britain considering the mess that the British negotiators had made of the terms of the Treaty of Paris.<sup>6</sup> Presumably, this refers in part to securing control of the communications route. L.C.

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<sup>2</sup> Fisher, Peter. The First History of New Brunswick. 1825. Woodstock, NB: Non-Entity Press, 1983. p. 23.

<sup>3</sup> Greenleaf, Moses. A Survey of the State of Maine in Reference to its Geographic Features, Statistics and Political Economy. (1829) Augusta, ME: Maine State Museum, 1970. p. 21.

<sup>4</sup> Hodgins, Thomas, Q.C. British and Canadian Diplomacy Affecting Canada, 1782-1899. Toronto: The Publishers Syndicate Limited, 1900; Col. Dudley Mills, RE. “British Diplomacy and Canada: The Ashburton Treaty”. United Empire (London: Royal Colonial Institute) Vol. II October 1911: 684-712.

<sup>5</sup> Hay, George U., ed. Canadian History Readings, Vol. I. Saint John, NB: Barnes & Co., 1900. W.F. Ganong, “History in Boundary Lines – Illustrated by New Brunswick”. p. 132.

<sup>6</sup> Hannay, James. History of New Brunswick. St. John, NB: John A. Bowes, 1909. Vol. 1, pp. 328, 330 and 331; Vol. 2, p. 55.

Hatch, in writing Maine: A History (1919) for the centenary of Maine's elevation to statehood, only mentioned the route as the reason for the British invasion of the District of Maine in 1814. While rehashing the problems of matching the treaty language to the ground, he also introduced states rights and timber revenues as factors in the boundary dispute.<sup>7</sup> Henry S. Burrage in Maine in the Northeastern Boundary Controversy (1919) wrote the first good, narrative history that was dedicated to the boundary controversy. The communications route only received two passing mentions during the section on the Webster-Ashburton negotiations. Even the dissolution of the Disputed Territory Fund received more attention. Given that this book was also written to celebrate Maine's centenary, this is not too surprising.<sup>8</sup>

Almost a half-century later, W.S. MacNutt in New Brunswick, A History: 1784-1867 (1963) mentioned the boundary dispute as part of the general narrative. Within this, he did mention the lost opportunity to adjust the boundary during the Treaty of Ghent negotiations and that, during the Webster-Ashburton negotiations, it was essential for the British to secure the communication route.<sup>9</sup> H. George Classen wrote Thrust and Counterthrust (1965) as a popular history of the development of the international boundary from the Atlantic to the Pacific oceans. In keeping with other writers, he mentioned the lost opportunity during the Treaty of Ghent

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<sup>7</sup> Hatch, Louis Clinton. Maine: A History. 3 Vols. New York: The American Historical Society, 1919. Vol 1, pp. 74 and 265.

<sup>8</sup> Burrage, Henry S. Maine in the Northeastern Boundary Controversy. Portland, ME: Marks Printing House, 1919. pp. 332, 334 and 340.

<sup>9</sup> MacNutt, W.S. New Brunswick, A History: 1784-1867. 1963. Toronto: Macmillan of Canada, 1984. pp. 160-161 and 308-313.

negotiations to secure the communications route. However, he quoted extensively from Ganong in doing this. Otherwise, he provided a general narrative history that does not highlight the importance of the route.<sup>10</sup> Howard Jones, in To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843 (1977), focused on the work of the boundary commissions and the details of the Webster-Ashburton negotiations. Ashburton's mandate to maintain control of the route and to keep the Americans back from the high ground overlooking the St. Lawrence River is mentioned, but the background to these instructions is not discussed in any great detail. Instead, his focus is on the conduct of the negotiations, such as the "battle of the maps".<sup>11</sup> The authors of Maine: The Pine Tree State from Prehistory to the Present (1995) provided interesting and well-written vignettes about aspects of Maine's history, including mention of the "important communications route" in relation to the Madawaska settlement. The chapter on the Aroostook War provided an overview of the boundary controversy, with a focus on timber. The communications route was mentioned in relation to the Webster-Ashburton negotiations but without any critical significance being attributed to it.<sup>12</sup> The most recent book on this subject, Francis M. Carroll's A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842 (2001), is another good narrative history but, this time, with an emphasis on the work of the boundary

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<sup>10</sup> Classen, H. George. Thrust and Counterthrust. Don Mills, ON: Longmans Canada Limited, 1965. pp. 12-18.

<sup>11</sup> Jones, Howard. To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843. Chapel Hill, NC: The University of North Carolina Press, 1977. pp. 120 and 102-113.

<sup>12</sup> Judd, Richard W., Edwin A. Churchill and Joel W. Eastman, ed. Maine: The Pine Tree State from Prehistory to the Present. Orono, ME: University of Maine Press, 1995. pp. 244 and 351.

commissioners and the surveyors. The communications route was mentioned as part of the Treaty of Ghent negotiations and as having demonstrated its importance during the War of 1812. It reappeared during the discussion of the King of the Netherlands arbitration and again as an important part of Ashburton's negotiating instructions, but without any great degree of analysis.<sup>13</sup>

Carroll did reference Kenneth Bourne's Britain and the Balance of Power in North America, 1815-1908 (1967), which focused on the British strategies for defending British North America from a possible American attack. The importance of the communications route was mentioned on several occasions but was not discussed in any detail. When it was mentioned, it was in relation to the naval and land defences of the St. Lawrence and the Great Lakes and the route, while important, was secondary to the discussion.<sup>14</sup> Bourne stated that his handling of the defence issues concerning British North America was partly based on C.P. Stacey's "The Myth of the Unguarded Frontier, 1815-1871".<sup>15</sup> Stacey's focus in this article was the land and lake defences of Canada. The narrative might have been different had Bourne been influenced by Stacey's "The Backbone of Canada". Stacey's purpose in this 1953 report was to highlight the military importance of the development of a trans-Canadian transportation route. But, in less than six pages, Stacey provided an excellent overview of the strategic significance of the Grand

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<sup>13</sup> Carroll, Francis M. A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842. Toronto: University of Toronto Press, 2001. pp. 23, 61, 148, 196 and 267.

<sup>14</sup> Bourne, Kenneth. Britain and the Balance of Power in North America, 1815-1908. Berkeley and Los Angeles: University of California Press, 1967. pp. 5, 11, 105-106.

<sup>15</sup> Ibid. p. ix. Refers to C. P. Stacey, "The Myth of the Unguarded Frontier, 1815-1871", American Historical Review, LVI (1950-51), 1-18.



Communications Route, which he called the Temiscouata-Madawaska Road. He covered the highlights of its use during the American Revolution, the War of 1812 and the Rebellions in the Canadas before concluding with its importance as the key British objective in the Webster-Ashburton negotiations. However, given the brevity of the report, he was not able to discuss the route in depth.<sup>16</sup>

There are two books that discuss the military events that impacted on the Grand Communications Route. The first is David Facey-Crowther's The New Brunswick Militia, 1787-1867.<sup>17</sup> This is an excellent account of the New Brunswick militia during this period. The importance of the Grand Communications Route was mentioned during the discussions of the War of 1812 and the Aroostook War. However, Facey-Crowther's focus was on the development of the militia at the political and organizational levels. The best book to provide in depth information about the activities of the Maine posse and militia during the Aroostook War was Geraldine Tidd Scott's Ties of Common Blood: A History of Maine's Northeast Boundary Dispute with Great Britain, 1783-1842.<sup>18</sup> While this book covered many of the same events that this chapter will, the focus was different. Scott was providing a narrative history of the whole period from the Maine perspective while this chapter will focus on the Grand Communications Route. However, her information was invaluable and forms an important secondary source document.

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<sup>16</sup> Stacey, Colonel C.P. "The Backbone of Canada", Canadian Historical Association, Annual Report 1953, 1-13. The discussion of the Grand Communications Route is on pages 1-6. It should be noted that, while the author had read Stacey's report some years earlier, this chapter was written without direct reference to it until the conclusion was crafted.

<sup>17</sup> Facey-Crowther, David. The New Brunswick Militia, 1787-1867. Fredericton, NB: New Brunswick Historical Society and the New Ireland Press, 1990.

<sup>18</sup> Scott, Geraldine Tidd. Ties of Common Blood: A History of Maine's Northeast Boundary Dispute with Great Britain, 1783-1842. Bowie, MD: Heritage Books, Inc., 1992.

The only book to focus on the military history of the route was this author's previously mentioned The Road to Canada: The Grand Communications Route from Saint John to Quebec. This was written as a popular history and lacks the footnoting that would give it academic authority.

The aim of this study is to add to the historiography of the Maine/Quebec/New Brunswick border controversy and, in doing so, to examine the role of the British military in defending the Grand Communications Route and the frontier between British North America and the United States of America as it ran between the State of Maine and the Provinces of Quebec and New Brunswick. As demonstrated in the historiography review, this aspect of the history of the disputed territory is very much *terra incognita*.

#### **From Earliest Times to the War of 1812.**

When looking at a map of New Brunswick, one of the key features that stands out is the St. John River. In the upper reaches, it begins to bend westward about where the Madawaska River joins it. The Madawaska runs south from Lake Temiscouata and from here it is but a short portage over the height of land to the St. Lawrence River. This then provides access to Quebec City and other locations up river from there. This route that links the Bay of Fundy to the St. Lawrence River has been an important communications route for thousands of years. Archaeological evidence points to patterns of pre-historic trade along the route.<sup>19</sup> Maliseet and

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<sup>19</sup> Burke, Adrian L. "From the St. John to the St. Lawrence, and Back: The Archaeology of an Ancient Portage Route". This presentation was given to the New Brunswick Archaeological Society in 2001. At the time, Dr. Burke was a member of the Department of Anthropology and the Institute for Quaternary and Climate Studies at the University of Maine. It should be noted that the First

Mi'kmaq legends relate its use by war parties.<sup>20</sup> It is not surprising that it should also maintain this importance following the arrival of the Europeans in the 17<sup>th</sup> century. This route became important to the French in the latter half of the 17<sup>th</sup> century after New France and Acadia had become crown colonies. The governor of Acadia was subordinate to the governor in Quebec and so communications between the two became important. Travel by ship to Quebec could also not be relied on due to weather, enemy action and the closure of the St. Lawrence River by ice each year. When Louis-Alexandre Des Friches de Meneval became Governor of Acadia in 1687, he was given three specific tasks, one of which was to find an overland route between Acadia and Quebec City.<sup>21</sup> The logical and only practical choice was the one that followed the St. John/Madawaska/Lake Temiscouata/St. Lawrence route. The papers of Joseph Robineau de Villebon, the governor of Acadia from 1690 to 1700, confirm the frequent use of this route.<sup>22</sup> By the middle of the 18<sup>th</sup> century, the French had established at least two posts along the upper reaches of the route. The narrative of a journey of a messenger from Isle Royale (Louisburg) to Quebec City in the winter of 1756 records the presence of French posts at Grand Falls and

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Nations used a variety of routes to travel between the Upper St. John River and the St. Lawrence River. The Temiscouata portage was opened by the French.

<sup>20</sup> Mechling, W.H. Malecite Tales. Ottawa: Government Printing Bureau, 1914. Several oral histories relate the interactions between the Maliseet and Mi'kmaq of northern New Brunswick and the Mohawks, who are also known as the St. Lawrence Iroquois. Of note are: pp. 106-107, the stories of the destruction of a Mohawk war party at Grand Falls and pp. 121-126, that specifically mentions the portage route between the St. John and the St. Lawrence.

<sup>21</sup> Lanctôt, Gustave. A History of Canada, Volume Two: From the Royal Régime to the Treaty of Utrecht, 1663-1713. trans Margaret M. Cameron. Toronto: Clarke, Irwin & Company Limited, 1964. pp. 169-171

<sup>22</sup> Webster, John Clarence, ed. Acadia at the End of the 17<sup>th</sup> Century. Sackville, NB: The Tribune Press, 1934. Reprinted by the New Brunswick Museum 1979. This contains frequent references to sending messengers to Quebec by canoe, i.e. p. 104, the entry for June 2<sup>nd</sup> 1697 reads "A canoe left for Quebec with such information for Count Frontenac as I had gathered since my last despatch".

another along the banks of Lake Temiscouata.<sup>23</sup> These posts were likely established after 1745, as Captain Pote in his account of being taken captive and marched from the Annapolis Basin via the St. John River to Quebec does not mention them.<sup>24</sup>

The French regime in Canada ended in 1763 with the Treaty of Paris that concluded the Seven Years War. The entire route was now on British territory. However, the British made little use of it because the route from Montreal via Lake Champlain and the Hudson River to New York was more convenient in the winter. This route was severed in May of 1775 when the American rebels captured Fort Ticonderoga. The British did not start to make use of the St. John River route until 1778. First they had to re-establish control over the settlements along the lower reaches of the river. These had been lost to the British in 1776, when the settlers rebelled, formed a Committee of Safety and placed themselves under the protection of Massachusetts. Two unsuccessful rebel invasions by Colonels Eddy and Allan followed in 1776 and 1777. The British finally regained control of the river at the end of 1777 when Fort Howe was built in Saint John.<sup>25</sup> The first recorded British military use of the route occurred in October 1778 when a party of twenty-two sailors or soldiers were sent by land from Halifax to Quebec. Their ship had been delayed by winds and could not proceed up the St. Lawrence that season because of

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<sup>23</sup> Harvey, D.C. The French Regime in Prince Edward Island. New Haven: Yale University Press, 1926. pp. 244-246. Appendix D: Account of a Journey in Winter on the Ice from Chedaique (Shediac) to Quebec [in 1756]. The size of the posts is not known and they could have been as small as food caches.

<sup>24</sup> Pote, Capt. Wm. Journal of Captain William Pote Jr. during his captivity in the French and Indian War from May 1745 to August 1747. Edited by J.F. Hurst. New York: Dodd and Mead, 1896. pp. 67-68.

<sup>25</sup> Raymond, W.O. The River St. John: Its Physical Features, Legends and History from 1604 to 1784. 1910. Edited by Dr. J.C. Webster. Second Edition. Sackville, NB. The Tribune Press, 1950. pp. 214-221.

the annual freeze-up. “Thomas, Indian Chief”, who was most likely their guide, accompanied them.<sup>26</sup> At about the same time, couriers started carrying military despatches along the route to and from Quebec. This provided the critical wartime communications link between Quebec and the outside world, especially during the winter months. Sir Frederick Haldimand, the Governor of Quebec, was acutely aware of this as he wrote in the winter of 1779, “our communications with the other parts of the Empire being in a manner totally cut off” due to the ice in the St. Lawrence River. Later in the year, he wrote to Captain Gilfred Studholme at Fort Howe asking him to send any intelligence, or news, that was available.<sup>27</sup>

Security of the route was an early concern. Although his invasion of 1777 had been defeated, the rebel Colonel John Allan and his native allies still posed a threat to Western Nova Scotia and the communications route. In June of 1779, British forces led by Brigadier General Francis MacLean captured Castine (Maine). While the follow-on attack on Machias, where Allan and a number of privateers had their base, was not successful, the occupation of this area must have reduced the ability of the American rebels to attack the British posts and ships. News of this conquest was sent to Haldimand over the communications route.<sup>28</sup> Early in 1780, Haldimand wrote to Lieutenant Governor Richard Hughes of Nova Scotia that he was resisting pressure from the merchants establish an Express between Quebec and Halifax for commercial mail. He was worried that the increased level of activity

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<sup>26</sup> University of New Brunswick (UNB). Loyalist Collection. Papers and Correspondence of Sir Frederick Haldimand. MSS No. 21809. Letter dated 19 October 1778.

<sup>27</sup> *Ibid.* MSS 21810. Haldimand to Brigadier General Francis MacLean dated May 2, 1779 and Haldimand to Studholme dated August 1779.

<sup>28</sup> *Ibid.* MSS 21809. Studholme to Haldimand dated June 27, 1779.

would “draw the attention of the Rebels to that Route and be the means of intercepting the few messengers who occasionally pass between us”. In response to this concern, a blockhouse named Fort Hughes was built at Oromocto in early 1780.<sup>29</sup> This military post helped to guard the route, protect the new mast-cutting operations, remind the recently rebellious inhabitants of their loyalty to the Crown and act as a forward base for the couriers. As the American Revolution was coming to an end and the Peace Commissioners were meeting in Paris, Haldimand was making plans to make the communications route more permanent.

In a letter to Governor John Parr of Nova Scotia, Haldimand broached the “idea of the great utility of opening a commodious Route from this Province to Halifax, in order to secure a certain and speedy Communication between the two Provinces in all seasons with the Mother Country”. For his part, Haldimand was surveying a road across the portage from the St. Lawrence to Lake Temiscouata with the aim of making the road useable by horsemen by the fall of 1783. He also suggested the building of post houses along the route to facilitate the passage of the couriers. Parr was asked to support the project from his side, which he readily agreed to, although he warned that the plan might be delayed by the more pressing need to settle the Provincial Corps on the St. John River. This possible delay actually helped Haldimand’s project in two ways. Brigadier General H.E. Fox, who commanded the troops in Nova Scotia, noted the settlement of the Loyalists would

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<sup>29</sup> *Ibid.* Haldimand to dated January 31, 1780 and MSS 21809 Studholme to Haldimand dated June 4, 1780.

“facilitate the communication between the provinces of Canada and Nova Scotia”.<sup>30</sup>

The British had been using a group of Acadians, led by Louis Mercure, as their most reliable couriers. They lived around Aucpac, just north of Fredericton, and were becoming very concerned about the arrival of the Loyalists and its effect on them. Their solution was to move further up the St. John River and they asked Mercure to petition Haldimand for land for them. This request was well received and Haldimand, in conjunction with Parr, decided to allow them to settle above the Great Falls with the hope that they would expand up the river and that their presence would “facilitate the communication” between the two provinces.<sup>31</sup> Just as the plan to secure the communications route through a series of post houses and new settlements along the route was taking shape, the Treaty of Paris of 1783 undid it.

It has been generally agreed that the British did not have a particularly competent negotiating team while the Americans did. In addition, a remote trail through the backwoods of Nova Scotia and Quebec would not have seemed that important when there were many more pressing matters to discuss.<sup>32</sup> The result was a boundary between the northeastern United States and British North America that appeared to sever the communications route. However, there was a difference between what the diplomats and the soldiers were doing. Diplomatically,

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<sup>30</sup> *Ibid.* Haldimand to Parr dated June 23, 1783 and MSS 21809 Parr to Haldimand dated September 2, 1783, Fox to Haldimand dated September 20, 1783.

<sup>31</sup> *Ibid.* Haldimand to Parr dated November 27, 1783.

<sup>32</sup> Hodgins, in *British and American Diplomacy*, pp. 10-48, was highly critical of the British negotiators and how they were no match for the American ones. Stacey, in “The Backbone of Canada”, pp. 2-3, discusses the failing by the British negotiators to secure the route and uses the term “stupid” in reference to them. Carroll, in *A Good and Wise Measure*, p. 9, takes a kinder approach. While acknowledging that many have considered the work of the British negotiators to be “the work of stupidity or incompetence”, Carroll explains their efforts in the larger context of Britain trying to woe the Americans away from France.

negotiations were held to determine where the boundary actually was on the ground.

Vague wording in the treaty and inaccurate maps all contributed to the problem.

According to the treaty, the boundary ran:

From the North West Angle of Nova Scotia, viz. That Angle which is formed by a Line drawn due North from the Source of Saint Croix River to the Highlands along said Highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the northwestern-most Head of the Connecticut River.

The first step was to determine the southern part of the border. Neither river that flowed into Passamaquoddy Bay was called the Saint Croix. If the eastern river, the Magaquadavic, were chosen, then the line due North would have cut the communications route west of Fredericton, not far from Meductic. If the western river, the Schoodic, were the proper one, then the line would cut the route at Grand Falls.

While the diplomats wrestled with this problem, the military took steps to maintain the security of the route. New Brunswick became a separate province in 1784 and one of Governor Thomas Carleton's first tasks was to designate a capital. He chose the site of Ste. Anne's Point, which he renamed Fredericton. There were several good military reasons for doing this. The major settlement, Saint John, was too exposed to enemy attack as had been amply demonstrated during the recent American Revolution, whereas Fredericton, being further inland, was more protected. It was at the head of navigation and so was accessible by ocean going ships. Because of its position on the communications route, a strong garrison would help to provide security for the route. Fredericton's more central location, combined with the good communications using the network of river and portage routes, meant



it would be easier to send troops to any part of the province that was threatened by enemy action, or to Quebec.<sup>33</sup> Carleton's plan for defending New Brunswick brought him into conflict with Major General Campbell in Halifax who had command of the British troops in New Brunswick. Carleton wanted two regiments of infantry to garrison the province. He felt that this show of force along the frontier would discourage any attempts by the Americans to disturb the peace of the province. However, Campbell was not in favour of this as he thought that it would leave the troops too exposed.<sup>34</sup> This was the first instance of what would become a continuing source of friction between the Lieutenant Governor of New Brunswick and the officer commanding the British troops in Nova Scotia Command, usually the Lieutenant Governor of Nova Scotia. From the New Brunswick perspective, it was better to defend forward and discourage any incursions by the Americans while the Halifax preference was to keep the troops more centrally located and respond to any threat by using Britain's naval superiority and command of the sea to move reinforcements to where they were needed.

Carleton was only given one regiment, the 54<sup>th</sup>, in 1786 for the purpose of "affording protection and assistance to the Loyalists who were settling" in New Brunswick.<sup>35</sup> It was used to garrison Fredericton, Saint John and Fort Cumberland. However, this was an inadequate force for the task and the settlements above

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<sup>33</sup> Provincial Archives of New Brunswick (PANB). RS 330. Records of Lieutenant Governor Thomas Carleton. Microfilm F297. Carleton to Lord Sydney, the Home Secretary, dated April 25, 1785. Winslow Papers. Carleton to Edward, Duke of Kent dated 3 February 1800.

<sup>34</sup> *Ibid.* Carleton to Sir George Yonge, the Secretary of State for War, dated 4 August 1785.

<sup>35</sup> Bona, Thos. D. Records of the 54<sup>th</sup> West Norfolk Regiment. Roorkee, India: Thomason Civil Engineering College Press, 1881. pp. 12 and 15. The 54<sup>th</sup> arrived in New Brunswick in 1786 and departed in 1791.

Fredericton suffered from the lack of protection. Many of the Maliseet had sided with the Americans during the recent war and this legacy of hostility lingered on. Not unexpectedly, there was friction between the new inhabitants and the Maliseet along the upper St. John River. The First Nations had been threatening the settlers in the area of Meductic in late 1786 and had attempted to kill a militia officer.<sup>36</sup> In a letter to Dundas dated 20 November 1790, Carleton stated, “the progress of the upper settlement was impeded by the insolence of the Savages”. The hostile acts by the Maliseet had alarmed the inhabitants to the point where settlements were on the verge of being abandoned and the communication with Canada was “rendered precarious and unsafe”, which placed Carleton’s vision of a chain of settlements up the St. John River in jeopardy. To provide reassurance, Carleton formed “a temporary Depot of provisions at one of the uppermost settlements [in the vicinity of Woodstock] that would serve as a gathering point for their defence if actual hostilities broke out.”<sup>37</sup> There was also unrest further up river in the Madawaska settlement. The Maliseet there were upset because of the sharp trading practices of fur traders from Quebec who were exchanging their winter harvest of furs for liquor. This left the Maliseet with nothing tangible to show for their winter hunt and still owing the Madawaska settlers who had advanced them supplies. There was concern that the situation would escalate if left unchecked.<sup>38</sup>

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<sup>36</sup> PANB. RS 330. Carleton to Dorchester dated 5 December 1786 and 31 January 1787.

<sup>37</sup> UNB. Loyalist Collection. Lieutenant Governor of New Brunswick (LGNB) Letterbooks. Carleton to Henry Dundas, the Home Secretary, dated 20 November 1792.

<sup>38</sup> MacNutt. New Brunswick. pp. 81-82. Cites CO 188/4 Carleton to Dorchester dated 1 October 1790.

In addition to the unrest in the Madawaska settlement, there was a growing possibility of war in Europe. This was mainly due to the French Revolution of 1789 and the ensuing upheavals. Lord Dorchester was watching these developments and making his plans to defend British North America should there be a war. It is clear that Dorchester had not forgotten the usefulness of the communications route during the American Revolution. In November of 1788, he informed Carleton that he might wish to move two regiments from Nova Scotia through New Brunswick to Quebec. Carleton was tasked to develop a plan to do so. He was familiar with the route as he had snow-shoed from Fredericton to Quebec the previous winter to visit his brother, Lord Dorchester, who was seriously ill. The resulting plan was probably the genesis of the idea to build military posts at Presqu'Île and Grand Falls to facilitate the movement of troops. Construction of these posts was approved by Dorchester in the summer of 1790.<sup>39</sup>

Carleton urgently needed more troops in order to garrison these new posts and the 6<sup>th</sup> Regiment of Foot was sent to him in 1790. This allowed him to place a company of infantry in each of the two new posts at Presqu'Île (just below Florenceville) and at Grand Falls (Fort Carleton), which were built in 1791. The building of military posts along the line of communications was not a new idea. Lieutenant Colonel Morse, the Chief Engineer in America, had recommended it in his report about the Province of Nova Scotia, including its defences, in 1784.

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<sup>39</sup> UNB. Winslow Papers (on line). Dorchester to Carleton dated 22 November 1788 and Entry in "Observations and Memorandums" dated 21 August 1790. While attributed to Dorchester, the writer was more likely Edward Winslow. Hannay, History of New Brunswick. Vol. 1. p. 200. Refers to a despatch from Carleton to the Secretary of State in which Carleton described his journey.

However, the creation of these two new “Upper Posts” was a gamble, as it was not known for certain if they were located in the United States or British North America. Not everyone was in favour of building the posts and James Glenie was particularly outspoken in his criticism of Carleton. His main complaints were that the posts were “within the limits of the United States”, that they were expensive to build and maintain and that their only purpose was “to encourage the settlement of the upper part of the river”.<sup>40</sup> However, the results justified the risks and Carleton was able to report that “by the chain of posts, thus established, the Communication with Canada is become perfectly easy and safe, countenance and security is given to our extensive and flourishing Settlement of Acadians above Grand Falls, and there is every reason to suppose that the country between the two posts will soon become of consequence”.<sup>41</sup> These actions allowed the new postal service, which was

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<sup>40</sup> MacNutt. New Brunswick. pp. 102 and 468n. Cites PRO CO/188/4 and 188/5. PANB Mfm F1382 C.O. 188/4 p. 755 has a letter from Glenie to Evan Nepean, Under Secretary of the Home Office, dated 24 March 1792 in which Glenie complained about Carleton building the Upper Posts. The quote comes from this letter.

<sup>41</sup> Raymond. Winslow Papers. p. 441. Carleton to Prince Edward dated 3 February 1800. Chipman, Ward. Remarks Upon the Disputed Points of Boundary under the Fifth Article of the Treaty of Ghent, Principally Compiled from the Statements Laid by The Government of Great Britain Before The King of the Netherlands, as Arbiter. Second Edition. Saint John, New Brunswick: D.A. Cameron, 1839. pp. 66-68. The documents discuss the formation of the militia company at Madawaska in 1790 and the arrest of Lieutenant Jacques Cir in May of 1792. PANB. RS 330. Records of Lieutenant Governor Thomas Carleton's. Microfilm F297. Carleton to the Rt. Hon. Henry Dundas dated 20 November 1792. Brymner, Douglas. Report on Canadian Archives, 1884. Ottawa: Maclean, Roger & co., 1885. Note C. Report on Nova Scotia by Lt. Col. Robert Morse, RE, 1784. p.xlix. Morse had also observed “the establishing a safe and easy means of communications, by means of the River St. John, with Canada seems to be an object of the first importance to both Provinces”. Reference to Glenie's letter can be found in: Hannay. History of New Brunswick, Vol. 1. p 220; Clarke, E.A. The Presqu'île Military Post in the Old Parish of Wakefield. Manuscript Collection of the Carleton County Historical Society, Woodstock, N.B., 1979. p.5; MacNutt. New Brunswick. p. 468. PRO CO 188/4 and CO 188/5, circa 1792. PANB Mfm F1382 C.O. 188/4 p. 755 has a letter from Glenie to Evan Nepean, Under Secretary of the Home Office, dated 24 March 1792 in which Glenie complained about Carleton building the Upper Posts. The quote comes from this letter.

established in 1788, to operate in relative security between Halifax and Quebec via Fredericton.<sup>42</sup>

There was also now renewed emphasis on maintaining law and order in the Madawaska settlement. Because the area was claimed by both Quebec and New Brunswick, there was the potential for friction between the two administrations. Dorchester acknowledged this, and until a resolution to this problem of jurisdiction could be reached, wrote to Carleton about the importance of ensuring “that these people in the interval do not run into lawless habits to their own and the public detriment”. In order to provide the needed additional authority, Lord Dorchester, the Governor of Quebec, formed a militia company at the Madawaska settlement in 1790 and issued militia commissions to Captain Francois Sir and Lieutenant Jacques Cir.<sup>43</sup> Carleton was forming a New Brunswick militia company there at the same time. In order to prevent problems, Dorchester suggested that Carleton commission the same officers, which appears to have happened.<sup>44</sup> In addition, Carleton appointed a magistrate, Thomas Costin, in 1791 to enforce the law.<sup>45</sup> The problem of dual jurisdiction led to the arrest of Jacques Cir in 1792 by the New Brunswick magistrate Thomas Costin. This was an episode in the ongoing trade conflict between the Quebec and Madawaska based fur traders. As Quebec militia officers

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<sup>42</sup> Raymond, Winslow Papers, p. 356. Lord Dorchester to Carleton dated 3 March 1788. The primary purpose of the new post was to carry State correspondence and Carleton was instructed to facilitate its passage through New Brunswick.

<sup>43</sup> Chipman, Remarks, pp. 67-68. UNB. Winslow Papers Online. Vol. 7-64. Dorchester to Carleton dated 18 September 1790.

<sup>44</sup> UNB. Loyalist Collection. NBLG. Despatches Received. Dorchester to Carleton dated 5 September 1790 and Henry Dundas, Home Secretary, to Carleton dated 10 December 1792. Jacques Cir was appointed as a militia officer in Madawaska on 5 September 1790. English writers had difficulty with spelling French names. In fact, they were brothers, François and Jacques Cyr.

<sup>45</sup> Raymond, Winslow Papers, p. 395. Costin to Winslow dated 2 July 1792.

also had civil powers, Cir attempted to execute a Quebec writ against Francois Albert of Madawaska. Costin, knowing that New Brunswick militia officers did not have this authority, had Cir arrested and taken to Grand Falls by a sergeant and four soldiers from Fort Carleton. The military in what would become the disputed territory had now taken on another role, that of aid to the civil power.<sup>46</sup>

The outbreak of war with Revolutionary France occurred in 1793. Both regular regiments in New Brunswick, the 6<sup>th</sup> and the 65<sup>th</sup>, were required elsewhere and left the province the same year. Except for a company of artillery at Saint John, and about 3,000 poorly armed militiamen, New Brunswick was defenceless.<sup>47</sup> The British government quickly responded to this shortcoming by authorizing the raising of a provincial corps to be called the King's New Brunswick Regiment. By the summer of 1793, sufficient troops had been recruited to garrison St. Andrews, Saint John and Fredericton, plus provide a "Subaltern's party at each of the upper-posts". The possibility of the United States entering the war continued to worry New Brunswick officials. Edward Winslow, a prominent member of the government, was concerned that the United States would not uphold its declaration of neutrality.<sup>48</sup> The following year, Carleton expressed the need to remain on good terms with the Maliseet in order to prevent any attempt by the Americans to turn them against the

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<sup>46</sup> Chipman. Remarks. p. 67.

<sup>47</sup> UNB. Loyalist Collection. LGNB Letterbook. Carleton to Dundas dated 29 March 1793 and Carleton to Dundas dated 26 April 1793.

<sup>48</sup> Raymond. Winslow Papers. pp. 404-405. Winslow to Governor Wentworth of Nova Scotia dated 4 August 1793. Winslow was a member of the New Brunswick Council and held several other posts such as Muster-Master and later Boundary Commissioner as well as President of the Council.

British.<sup>49</sup> These concerns were not without substance. In mid-June 1794, Samuel G. Titcomb, an American surveyor in the employ of Massachusetts, appeared at Meductic and planted a stake. He declared this to be the border between the United States and British North America. This caused great unrest amongst the settlers. The garrison at Presqu’Ile removed the stake and, presumably, calm returned to the river.<sup>50</sup> Fortunately, there were no substantial threats to the security of the communications route. The garrison at the Upper Posts continued to provide security by their presence and assistance to the posts or mails. The need to maintain control of the route was an ongoing concern. In 1800, Winslow wrote to Wentworth about the ongoing boundary discussions and forcefully stated, “If a rupture takes place between us and the United States we must have the road if we fight for it”.<sup>51</sup>

In 1798, a Boundary Commission, constituted under the authority of the Jay-Grenville Treaty of 1794, determined that the Schoodic River was the Saint Croix River of the 1783 Treaty. It was a deliberate decision by the Commission that that the line drawn north from its source at the Monument passed just to the west of the Presqu’Ile military post and crossed the St. John River slightly west of Grand Falls. As a result, the upper posts could not have been better positioned to defend Great Britain’s claim to what would be called the disputed territory. The Presqu’Ile post was close to Mars Hill that was at the southern edge of the Aroostook River

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<sup>49</sup> UNB. Loyalist Collection. LGNB. Dispatches Sent. Carleton to Duke of Portland dated 19 December 1794. Carleton stressed the need for “cultivating a friendly disposition in the Savages” and had hired Mr. Ciguard as an Indian agent.

<sup>50</sup> Raymond. Winslow Papers. pp. 410-411. Lieutenant Adam Allan to Edward Winslow dated 1 July 1774 and footnotes.

<sup>51</sup> Ibid. pp. 450-451. Winslow to Sir John Wentworth dated 24 June 1800.

watershed that defined the lower boundary of the disputed territory, and Fort Carleton was located at the juncture of the disputed territory and the St. John River. When combined with the militia company in the Madawaska settlement, Great Britain had good cause to believe that the communications route had been secured.<sup>52</sup>

Following the end of the war with France by the Treaty or Peace of Amiens in 1801, the King's New Brunswick Regiment was quickly disbanded. New Brunswick's defences were again left to the company of artillery and the militia. However, Carleton's vision of a chain of settlements was continued when some members of the disbanded Kings New Brunswick Regiment were given land grants above Woodstock.<sup>53</sup> The military experience of these settlers meant that a semi-trained and experienced militia to defend the route could be quickly called out if needed. The Peace of Amiens did not hold and war with France was resumed in 1803. As before, a provincial regiment was raised, this time it was known as the New Brunswick Regiment of Fencible Infantry.<sup>54</sup> This regiment cast further afield for recruits and sent recruiting parties to Lower Canada. They wasted no time and,

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<sup>52</sup> Carroll. *A Good and Wise Measure*. pp. 13-17.

<sup>53</sup> Clarke, Ernest. *The Weary, The Famished and The Cold: Military Settlement, Upper St. John River, 1814-1821*. Manuscript Collection of the Carleton County Historical Society, Woodstock, N.B., 1981. p. 35. PANB. RS 637. Surveyor General. 2.a.12. Sproule, York Co. 1786-1811. 16 Apr 1806. This is confirmed by this example. Lot # 70, Parish of Wakefield., was to be granted to John Humphries for service in NBR, however he assigned his grant to John Wilmott via a quit claim. Wilmott received the property as a land grant on 21 July 1809. (F16303, D-366, 497). LAC. RG 7, G7, Vol. 14 (mfim roll C-15631). Report on the Province of New Brunswick dated 31 December 1812. Deputy Assistant Commissary General W.H. Snelling wrote "when the late New Brunswick Regiment was disbanded, a number of the non-commissioned officers and privates were encouraged to take land at this place [Parish of Wakefield]" as part of "the great object of rendering a communication with that country [Canada] safe and easy".

<sup>54</sup> Squires, W. Austin. *The 104<sup>th</sup> Regiment of Foot (The New Brunswick Regiment, 1803-1817)*. Fredericton, NB: Brunswick Press, 1962. pp. 23-26. He reprinted the Letter of Service for the raising of the [New Brunswick] Regiment of Fencible Infantry from the War Office to Brigadier General Martin Hunter dated 1 August 1803.



by February 1804, Lieutenant Dugald Campbell reported having about 100 men at Quebec City.<sup>55</sup> Depending on the season, the recruits were sent to New Brunswick by sea or overland using the communications route. In August of 1806, Thomas Costin reported sending canoes from Madawaska to Lake Temiscouata to transport a part of 125 recruits and their families to New Brunswick.<sup>56</sup> The garrisons at the Upper Posts now had another task; that of facilitating the movement of recruiting parties along the route.

By the start of the 19<sup>th</sup> century, the role of the military in the disputed territory had been clearly established. First and foremost, it was to provide security for the communications route that became known as the Grand Communications Route.<sup>57</sup> The establishment of military posts and an independent militia company accomplished this. This also allowed them to accomplish their second task, which was to provide assistance to the carriage of the mail. Another, more passive task, was the added confidence that their presence gave to the settlers which encouraged the growth of the settlements along the upper St. John River. This, in turn, added to the security of the communications route, especially when members of disbanded regiments, either Loyalist or provincial, were settled along the route. The garrisons and militia company could be called on to provide support to the local magistrates and constables. An “aid to the civil power” role was nothing new for the military.

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<sup>55</sup> Raymond. *Winslow Papers*. pp. 514-515. Dugald Campbell to Winslow dated 29 February 1804.

<sup>56</sup> UNB. *Winslow Papers (on line)*. Vol. 13-128. Costin to Winslow dated August 4, 1806.

<sup>57</sup> Clarke, E.A. *The Weary, The Famished and The Cold*. p. 5. While Clarke introduced this name in the recent historiography, he has stated that Colonel Joseph Bouchette first used the name.

Finally, the military posts helped to facilitate the movement of military parties over the route. These roles would all be tested as the War of 1812 loomed on the horizon.

### **The War of 1812 to Maine Statehood.**

The War of 1812, which began in the summer of 1812, was the North American sub-set of the larger Napoleonic Wars that were raging in Europe and around the world. Security of the communications route was an immediate concern as it was expected that the Americans would try to interfere with it. A number of river and portage routes allowed Americans access to it without passing through the British settlements along the St. John River. One of these was the Penobscot and Allaghash River route that provided access to the St. John River, well above the Madawaska settlement. While nothing was done to block this route, a small garrison was placed at Meductic where the Eel River portage route from the District of Maine met the St. John River. The Americans had used this route during the Revolution and it was a wise plan to deny it to them.<sup>58</sup> One weakness in this defensive plan was the American settlement at Houlton, which had been founded in 1807. Its main land access route was from the St. John River at Woodstock, about fifteen miles to the east. This potential threat was neutralized in January 1813, when Ensign George Morehouse occupied it with a detachment of the New Brunswick Fencibles and administered an oath of neutrality to all of the male inhabitants over the age of sixteen.<sup>59</sup> The British also remembered how some of the members of the First

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<sup>58</sup> Squires, *The 104<sup>th</sup> Regiment*, p. 109.

<sup>59</sup> PANB. RS 336/A.2. 1813/3. Ensign George Morehouse to Lieut. Col Hailes dated 14 January 1813. PANB. RS 8-49. mfm F-7906 has another copy of this letter that includes a copy of the oath of

Nations had supported the Americans during the Revolutionary War. The possibility of this reoccurring was minimized just after the start of the war. In July of 1812, Odell wrote that “a number of principal Indians of this District [New Brunswick]” had sworn an oath to remain neutral during the war between the United States and Great Britain.<sup>60</sup> These small actions provided for the security of the communications route and the province in the near-term.

Later in the fall, Sir John Coape Sherbrooke, the Lieutenant Governor of Nova Scotia, who was also the military commander of Nova Scotia Command that included New Brunswick, started to develop a longer-term security plan. He assigned Captain Gustavus Nicolls of the Royal Engineers to report on the defences of New Brunswick. In his report of November 1812, Nicolls recommended basing the defence of the province on the St. John River, as it was essential to protect the communications route as it was “the only chain of connection in winter, between the Mother Country & Canadas”. The key was the port of Saint John and control of the portage routes that led into the St. John River. This report led to improvements in the fortifications of Saint John and building blockhouses, such as the one at Fredericton Junction, to guard the portage routes. To add defence in depth, the fortifications at St. Andrews were improved to defend the port and to give additional protection to the Oromocto River portage route. A blockhouse and battery were built at Worden’s, where the St. John River narrowed, as an in-depth position should

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neutrality and a list of the male inhabitants of Houlton over the age of 16 and another list of Americans living along the St. John River between Meductic and Presqu’Ile.

<sup>60</sup> PANB. RS 336/A/2. 1812/2. Statement by Jonathan Odell, Provincial Secretary, dated 17 July 1812. On 10 July 1812, Odell had advised that the magistrates of St. Andrews had negotiated a peace treaty with the Passamaquoddy whereby they would remain neutral.

the defences of Saint John fail. There was also a plan to erect a fortification at the junction of the St. John River and Washademoak Lake that would back up the Saint John defences and secure the portage route to Nova Scotia via Moncton and Fort Cumberland.<sup>61</sup> Because of the reduced threat to New Brunswick, this latter fortification was not built.

The British had more than held their own during the fighting in Upper Canada during the summer but reinforcements were urgently needed before the start of the 1813 campaign season. The St. Lawrence River was closed by ice and so the only source of troops was by land from Nova Scotia Command. The Massachusetts/New Brunswick frontier was quiet and almost in a state of neutrality as commerce continued unmolested. This led the British authorities to release the 104<sup>th</sup> Regiment of Foot for service in Canada.<sup>62</sup> Six companies of the regiment made their remarkable overland march from Fredericton to Quebec, and the onward to Kingston, between 16 February and 12 April 1813. The companies left on successive days and for the first seven nights, the soldiers found shelter in the houses and barns of the chain of settlements along the St. John River. While Lieutenant John Le Couteur's journal does not mention the Presqu'Île military post, they did spend their ninth night at Fort Carleton. The inhabitants of Madawaska turned out with their sleighs and transported the troops for twenty-one miles through the settlement. The post house that had been established at the entrance to the Grand

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<sup>61</sup> The National Archives (TNA). WO 44, Vol. 145. Report of Captain Gustavus Nicolls on the Defences of New Brunswick dated 14 November 1812.

<sup>62</sup> Squires, *The 104<sup>th</sup> Regiment*, p. 81. This was the former New Brunswick Regiment of Fencible Infantry that had been raised to line status in September of 1810.

Portage on Lake Temiscouata also played a role. A badly frostbitten soldier was left there to recover from his injuries. Phillip Long, who kept the post house, also helped to guide a party across the lake. Both the military and civil establishments along the route were pressed into service and provided good support to the march.<sup>63</sup> This proved the wisdom of the plan that Carleton had devised some 25 years earlier.

As in 1793 a provincial regiment was authorized to replace the 104<sup>th</sup> and recruiting began in late 1812 for the New Brunswick Fencibles.<sup>64</sup> However, unlike in 1793, New Brunswick was not left entirely undefended as the 2<sup>nd</sup> Battalion of the 8<sup>th</sup> Regiment was sent to New Brunswick in June.<sup>65</sup> As manpower became available, the New Brunswick Fencibles sent detachments to garrison the Upper Posts. There was another call for reinforcements in the winter of 1814. A party of 217 sailors and Royal Marines under Captain Collier proceeded overland from New Brunswick to Kingston in early February. Later that month the 2nd Battalion of the 8th Regiment followed them to Canada. The 99th Regiment replaced the 2/8th during the following summer. As before, the inhabitants of New Brunswick turned out with their sleighs to facilitate the passage of the sailors and soldiers to Canada. This time they were carried by sleigh as far as the Presqu'Ile post and then through the Madawaska settlement. Security continued to be a concern as they passed

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<sup>63</sup> Graves, Donald E., ed. Merry Hearts Make Light Days: The War of 1812 journal of Lieutenant John Le Couteur, 104<sup>th</sup> Foot. Ottawa: Carleton University Press, 1993. pp 94-102. Squires. The 104<sup>th</sup> Regiment. p 129. Long guided Lieutenant Rainsford's party as they went to seek assistance for two companies that were storm stayed. Squires misidentified him as William Long.

<sup>64</sup> Squires. The 104<sup>th</sup> Regiment. p. 170. Permission to raise the regiment had been granted prior to October 21, 1812 as evidenced by a Horse Guards equipment directive of that date; PANB. RS 336/A.2. 1813/3. Ensign George Morehouse to Lieut. Col Hailes dated 14 January 1813. Morehouse had established his post at Meductic by 7 January 1813, which means his men, would have been recruited and equipped in the November/December 1812 timeframe.

<sup>65</sup> Nova Scotia Archives and Record Management (NSARM). WO 17/2360 (1813).

through the area in dispute. One of the naval officers, Lieutenant Kent, noted that while they were crossing Lake Temiscouata they were “apprehensive of being cut off by the enemy, being in the territory of the United States”. As it turned out, there was no threat made to their passage.<sup>66</sup>

Throughout the war, the safety of the mail was a concern for postal and military officials. At the start of the war, the postmaster general of Canada, George Heriot, requested a military escort of two soldiers for the mail between Madawaska and the entrance to the Grand Portage at Lake Temiscouata.<sup>67</sup> This concern was validated on two separate instances. During the summer or fall of 1813, an American tried to bribe a soldier of the New Brunswick Fencibles to desert with the bag of mail from Quebec that he was carrying. The soldier refused but unfortunately neglected to report the incident at the time. By the time the hue and cry went out for the American in November, he had long since departed the area. From the report, it would appear that the incident occurred somewhere between Grand Falls and Presqu’Ile.<sup>68</sup> Another attempt was made in the summer of 1814. An American had attempted “to bribe an Indian in order to intercept the mail from hence [Presqu’Ile] to Canada”. The native had refused and reported the incident to the British at the

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<sup>66</sup> Tracey, Nicholas, ed. The Naval Chronicle: The Contemporary Record of the Royal Navy at War, Vol. V, 1811-1815. London: Chatham Publishing, 1999. pp. 203-206. A letter written by Lieutenant Henry Kent, RN describing their march from Fredericton to Kingston in February to March 1814 is published here. Rear Pullen, Admiral H.F.. The March of the Seamen. Halifax: Maritime Museum of Canada, 1961. p. 10. NSARM. WO 17/2361 (1814).

<sup>67</sup> Clarke. The Weary, The Famished and The Cold. P. 46. Clarke cited a letter from Postmaster-General George Heriot, presumably to Lt. Gen Sir John Sherbrooke in Nova Scotia who commanded Nova Scotia Command, dated 18 August 1812. This letter has not been located. LAC. RG 8, “C” Series, Vol. 284. However, letters from Major General Thomas Saumarez dated 16 November 1813 and 7 June 1814 confirm the presence of military escorts.

<sup>68</sup> Library and Archives Canada (LAC). RG 8, “C” Series, Vol. 284. Major General Thomas Saumarez to General Sir George Prevost, Governor General and Commander of the Forces, dated 16 November 1813.

Presqu’Ile post.<sup>69</sup> These threats to the security of the route led the British to take steps to mitigate them.

The war with Napoleonic France ended in April of 1814 and reinforcements were now available for employment in North America. One of the plans for the campaign season of 1814 was the occupation of “much of the District of Maine”.

Sir John Sherbrooke, the Lieutenant Governor of Nova Scotia, was also considering building a military post at Madawaska. Both of these moves were designed, in part, to “secure an uninterrupted intercourse between Halifax and Quebec”. In addition, the Surveyor General of Lower Canada was placing military settlers along the route between the Madawaska settlement and the St. Lawrence River for “the purpose of facilitating the Communication between Lower Canada and New Brunswick”.<sup>70</sup>

While the operations against the District of Maine were a success, the invasion of the United States along the Richelieu River/Lake Champlain route from Lower Canada was a disaster. Not long afterward, peace talks began that culminated with the Treaty of Ghent on 24 December 1814. There was a desire to retain the territory in the District of Maine as a prize of war. Retention of this land would have forced back the border with the United States and provided more security to the Grand Communications Route. Even the Legislature of New Brunswick petitioned the Prince Regent and asked that, during the peace talks, he “direct such measure to be adopted as he may think proper to alter the boundaries between those [United] States and the Province, so as that the important line of communication between this and

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<sup>69</sup> *Ibid.* Vol. 284. Saumarez to Prevost’s Military Secretary dated 7 June 1814.

<sup>70</sup> *Ibid.* Vol. 1226. Prevost to Sherbrooke dated 15 July 1814.

the neighbouring Province of Lower Canada, by the River St. John, may not be interrupted".<sup>71</sup> Based on the recommendations of the Duke of Wellington, who thought that the military situation at the end of the war did not justify any requests to alter the boundaries, this was not to be. The peace treaty returned all territory to *status quo ante bellum* and, under Article V, created a new boundary commission to determine the location of the international border north from the monument.<sup>72</sup> The boundary commission surveyed the line north from the monument in 1817 and 1818, giving an eastern boundary to the area known as the disputed territory.<sup>73</sup>

However, Carleton's vision of a "chain of settlements" continued. In the normal post-war retrenchments, the British army soon began disbanding regiments. It was normal to offer free grants of land to veterans and a military settlement was established between the Presqu'Île post and Grand Falls in 1817.<sup>74</sup> Between 1817 and 1819, members of at least five disbanded regiments took up land in the military settlement. The military posts at Presqu'Île and Grand Falls were used as administrative centres to distribute the rations, tools and other supplies required during their first three years in order to establish their farms. This was a well-

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<sup>71</sup> Classen. Thrust and Counterthrust. p. 12; PANB. RS 24, S23-A-4. Legislative Assembly and Sessional Papers dated 2 March 1814 contains a draft copy with slightly different wording.

<sup>72</sup> MacNutt. New Brunswick. pp. 160-161.

<sup>73</sup> Carroll. A Good and Wise Measure. pp. 52-57, 61-62.

<sup>74</sup> PANB. RS 558/A/2a. Military Correspondence and Papers – 1806, 1814-1849. William H. Hailes, the Colonial Administrator to the Earl of Bathurst, dated 7 May 1817. This discussed the disbandment of the New Brunswick Regiment and the news that the President and Council had directed that a tract of land between Presqu'Île and Great Falls be used for a military settlement. If well settled it would "be of great consequence to both provinces in keeping the communication open between them" RS 336/A/2. 1816/2. Earl Bathurst to Sherbrooke, dated 6 March 1816. Bathurst provided notification of the disbandment of the New Brunswick Fencibles and stated that they were to be given land grants should they chose to settle in [British] North America; RS 336/A.3a. 1817/3. Sherbrooke to Major General Smyth dated 28 March 1817. Those members of the recently disbanded 104<sup>th</sup> Regiment who settled in New Brunswick were to be granted land as per the Prince Regent's instructions.



organized activity and, in November of 1819, Lieutenant James A. MacLauchlan, late of the 104<sup>th</sup> Regiment, was appointed to be the Superintendent of the Military Settlement. By 1822, the last of the military settlers had received their three years of assistance.<sup>75</sup> The two Upper Posts were no longer needed and they were abandoned by the military the same year.<sup>76</sup> As late as 1829, families were living in the converted Commissariat Stores in each location and were paying one shilling rent for them.<sup>77</sup> For over 30 years, the Upper Posts had played an important role in providing security to the communications route and in encouraging the settlement of the Upper St. John River valley. There was now a loose chain of settlements, mainly composed of disbanded soldiers or their descendents, stretching from the St. Lawrence River to the Bay of Fundy.

While there had been the ongoing threat of American interference with the route, no actual hostile acts, with a few minor exceptions, had occurred. The threat increased in 1817 with the arrival of American lumbermen on the St. John River, above the Madawaska settlement. The role of the militia officers would also take on a new aspect. In 1818, a group of American lumbermen and their families took up residence about 14 miles above the Madawaska settlement. One of them, Captain Nathan Baker, tried to convince the Acadian and Canadien inhabitants that this was United States territory. Captain Pierre Du Perree (Duperré) of the New Brunswick militia reported this to Judge J. Murray Bliss, the Solicitor General. Following this,

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<sup>75</sup> Clarke, Presqu'Île Military Post, pp. 18-19, The Weary, The Famished and The Cold, pp. 9, 58.

<sup>76</sup> Fisher, Peter. The First History of New Brunswick. 1825. Woodstock, NB:Non-Entity Press, 1983. p. 56.

<sup>77</sup> LAC. RG 8, Series II, Volume 33, p. 5. Royal Engineer report on the Military Reserves at Presqu'Île and Grand Falls dated 25 February 1831.

Thomas Wetmore, the Attorney General, asked Du Perree for more information, which he provided. While the Provincial government took no action against the Americans, the role of the militia officer as the “eyes and ears” of the government in the Madawaska settlement was established.<sup>78</sup>

### **Maine Enters the Controversy – the 1820s.**

While the District of Maine was part of Massachusetts, there were few challenges to British authority within the disputed territory. Massachusetts had made some land grants in Aroostook County at the turn of the 19<sup>th</sup> century but they were unoccupied. This all changed in 1820 when Maine became a state. Maine’s political leaders had fought hard to win statehood and now they were prepared to fight hard to ensure that Maine received all of its inheritance, which they believed included all of the disputed territory. As part of the statehood agreement, Maine and Massachusetts jointly owned the wild or undivided lands. As this included all of the disputed territory, the land agents for Maine and Massachusetts would become frequent visitors to the Madawaska settlement. In addition to trying to stop the cutting of illegal timber and issuing their own timber cutting permits, they also tried to convince the inhabitants that the disputed territory was part of the United States. The fact that the United States and Great Britain were trying to negotiate a peaceful settlement of the boundary, however did not concern them. The land agent’s

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<sup>78</sup> Van Buren, Martin. Maine Boundary. Washington, D.C.: United States Government, 1838. [Three thousand copies of the documents and papers relating to the Maine Boundary were printed in response to a Resolution of the House of Representatives dated 19 February 1838.] Senate Document No. 180. pp. 71-72. Du Perree to Bliss dated September 5, 1818, Wetmore to Du Perree dated January 8, 1819 and Du Perree to Wetmore dated February 20, 1819. Pierre Duperré was one of the first settlers in the Madawaska settlement and appears to have been one of the militia officers commissioned by Carleton in 1790 (This information was contained in an email from Béatrice Craig dated 29 January 2009).

declarations did concern the British authorities as it disturbed the peace and challenged the British stewardship of the disputed territory.

In his first message to both houses of the Maine Legislature on 2 June 1820, Governor Rufus King declared Maine's claim to the disputed territory. The following year, Maine sent an agent to explore the public lands (claimed by the State) along the St. John River. In response to report of illegal timber cutting, Benjamin J. Porter was sent to the Aroostook River to collect timber duties or to stop the lumbering operations. Another agent was sent in 1822 with the same mission. Then, in 1825, Maine and Massachusetts sent their land agents on a joint mission to the Madawaska settlement to grant lands on behalf of the states.<sup>79</sup> These aggressive activities by Maine and Massachusetts caused Sir Howard Douglas, the new Lieutenant Governor of New Brunswick, to reassess the security of the Madawaska settlement and the Grand Communications Route. He was not pleased with the state of the militia in the Madawaska settlement and he took steps in the fall of 1824 to reorganize it.<sup>80</sup> Lieutenant Colonel Allen, the inspecting field officer of militia, was sent to carry out this task. The militia became the 4<sup>th</sup> Battalion of the York County militia under the command of Major Peter Fraser.<sup>81</sup> The battalion had five companies that, according to an American report, consisted of more than 400 men.

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<sup>79</sup> *Ibid.* Senate Doc. No. 171. pp. 116-120. Report of the joint Select Committee of the Senate and House of Representatives of the State of Maine, in relation to the northeastern boundary of the State dated January 5, 1828.

<sup>80</sup> UNB. Harriet Irving Library (HIL) Archives. Sir Howard Douglas Letterbooks. MG H40 Vol. III. p. 2. Charles Douglas to Lt. Col Allen dated 27 Sep 1824. Allen was ordered to proceed to Madawaska and organize the militia there. Sir Howard Douglas was not pleased that militia was not organized in Madawaska.

<sup>81</sup> Facey-Crowther. *New Brunswick Militia*. pp. 46 and 157. All of the New Brunswick militia was in a neglected state and Sir Howard Douglas initiated a revitalization programme in 1824.

Given that the population of the settlement was only about 2,000, this was a potent force in waiting that could be used to provide security.<sup>82</sup> The British government did not forget the importance of the route. Sometime in 1823 or 1824, Stratford Canning, the Minister-Plenipotentiary to the United States, said, “The extent of the territory in dispute is not without some degree of interest but the objects of real importance are to remove the American frontier as much as possible from the line of the St. Lawrence, to open a direct communication between Canada and New Brunswick, and to exclude the Americans from a valuable position on Lake Champlain”. The first two objects would later become part of Lord Ashburton’s negotiating instructions.<sup>83</sup> The Duke of Wellington underscored the importance of the route to the scheme of defence for British North America when he wrote in 1825 that the route was “necessary in any view that may be taken of the defence of these provinces [Lower Canada, New Brunswick and Nova Scotia]”.<sup>84</sup>

In October of 1825, George Coffin and James Irish, the land agents of Massachusetts and Maine, visited the Madawaska settlement for the purpose of making land grants and issuing timber cutting permits. While their activities mainly effected the civil administration of the province, they also tried to convince the militiamen not to appear at a training day scheduled for 2 October. According to the land agents, as the settlement was part of the United States, the British could not fine

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<sup>82</sup> Van Buren. Maine Boundary. Senate Doc. No. 130. p. 55. S. B. Barrell to Henry Clay dated February 11, 1828, Report of the Special Agent.

<sup>83</sup> Bourne. Britain and the Balance of Power in North America. p. 59. Cites an “undated memorandum in the Stratford Canning papers, F.O. 352/59”.

<sup>84</sup> Wellington. Arthur, Duke of Wellington. Volume 2. pp. 572-573. Wellington to Bathurst dated 6 December 1825. Wellington was writing a cover letter to a Report of the Committee of Engineers who had just examined the defences of British North America.

the militiamen for non-attendance.<sup>85</sup> The American land agents had left the Madawaska settlement before any action could be taken against them. However, the New Brunswick authorities were now on their guard. The next instance of American interference with the militia came to light in 1827. Nathan Baker had died in 1821 and his brother, John, had inherited his property and married his widow.<sup>86</sup> Following the visit of the American land agents in 1825, when he received a land grant from them, John Baker had become an outspoken advocate of Maine's claim to all of the disputed territory. On the 4<sup>th</sup> of July 1827, he hosted an Independence Day gathering, hoisted an American standard, declared the Madawaska settlement to be part of the United States and tried to convince some of the Acadian/Canadien inhabitants to join with him. He also tried to prevent the passage of His Majesty's Mail through the settlement. For these actions, Baker was charged with sedition and brought to trial in Fredericton. During the course of the trial, it was learned that, during the previous year, he had also tried to interfere with militia training. Baker was duly convicted and sentenced to jail and a fine. In keeping with the "eyes and ears" role, it was Francis Rice, Adjutant of the militia battalion, who had initially reported Baker's activities to the authorities.<sup>87</sup>

The Baker arrest and trial placed the Madawaska settlement in the forefront of public attention. The United States government sent S.B. Barrell on a fact-finding

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<sup>85</sup> Van Buren. Maine Boundary. House Doc. No. 90. pp. 267-269. Major J.S. Fraser to Hon. Lt. Col. Shore, Adjutant General dated October 8, 1825 and Chas. R. Vaughan to Henry Clay dated December 2, 1825.

<sup>86</sup> Paradis, Roger. "John Baker and the Republic of Madawaska: An Episode in the Northeast Boundary Controversy". Dalhousie Review, Vol. 52 (1972/1973). pp. 78-95.

<sup>87</sup> Chipman. Remarks. Appendix No. 11. Report of the Trial of John Baker as copied from the Fredericton Royal Gazette of May 12, 1828. pp. vi, ix, xi and xvi.

mission to the disputed territory in the fall of 1827. His report was factual, balanced and neutral in tone.<sup>88</sup> Maine sent Charles S. Daveis on a parallel inquiry. Unlike Barrell's report, Daveis' was very prejudiced in favour of Maine's claims and quite inflammatory. The report was one of the references used by a Maine Joint Select Committee in making their report on the northeastern boundary situation. This report called on the United States government to support Maine and its citizens against British "incursion". It also carried the not too subtle threat that if the American government did not act, then it would be Maine's "duty to enforce her laws within her own jurisdiction, and to protect her own rights and the rights of her citizens". For Maine, its jurisdiction included all of the disputed territory.<sup>89</sup> The Baker trial and Maine's reaction to it now gave the United States government cause for concern. Pending a diplomatic resolution of the boundary issue, the American government wanted to remain on good terms with Great Britain while, at the same time, demonstrating support for Maine. The interim solution to this dilemma was to establish an American military presence on the southern border of the disputed territory, much like the British had done along the eastern border some four decades earlier. The nearest American settlement to the disputed territory was Houlton, Maine. Four companies from the 2<sup>nd</sup> United States Infantry arrived there during the summer and fall of 1828 and built Hancock Barracks. As the only access to Houlton

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<sup>88</sup> Van Buren. . Maine Boundary. Senate Doc. No. 180, pp. 52-58. . S. B. Barrell to Henry Clay dated February 11, 1828, Report of the Special Agent

<sup>89</sup> Ibid. Senate Doc. No. 171. pp 175-193. C.S. Daveis to Governor Lincoln dated January 31, 1828. Report of Charles S. Daveis, Esq., agent appointed by the Executive of the State of Maine, to inquire into and report upon certain facts relating to aggressions upon the rights of the State, and of individual citizens thereof, by inhabitants of the Province of New Brunswick; p. 127. Report of the Joint Select Committee of the Senate and House of Representatives of the State of Maine, in relation to the northeastern boundary of the State dated January 26, 1828.

was from Woodstock, New Brunswick, the troops also constructed a rough road that joined Houlton to the existing Maine road network.<sup>90</sup> The American government had demonstrated its support for Maine but had also established a presence on the fringe of the disputed territory that could be used to monitor the situation.<sup>91</sup> If necessary, it could now intervene in order to maintain the delicate balance between Washington and Bangor and Washington and London. This balance was soon tested. In the fall of 1828, Sir Howard Douglas learned the United States Congress had authorized the building of a road from Houlton to Mars Hill and that it would later be extended to the mouth of the Madawaska River. There were also indications that the Americans were going to build a military post at Mars Hill. After a round of diplomatic notes, the American government maintained its right to build the road but would defer doing so in the “spirit of amity, forbearance, and conciliation”.<sup>92</sup>

### **The Failed Arbitration to the Aroostook War.**

The boundary commission that was formed in accordance with Article 5 of the Treaty of Ghent was unable to “find” the boundary line as described in the Treaty of Paris of 1783. Another provision of the treaty allowed for submitting the question to arbitration. Great Britain and the United States agreed to this and King William of the Netherlands was selected as the arbitrator. He gave his decision in 1831 and roughly divided the disputed territory between the two countries. The

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<sup>90</sup> Scott. Ties of Common Blood. pp. 68-70. She referenced American army records and correspondence.

<sup>91</sup> Judd. Maine. p. 349. Richard Judd suggested that their role was “to reassure (and perhaps restrain) local citizens”. This would certainly make sense from the perspective of the American government.

<sup>92</sup> Van Buren. Maine Boundary. House Doc. No. 126. pp. 15-19. Sir Howard Douglas to C. R. Vaughan dated December 11, 1828; Vaughan to Martin Van Buren dated April 10, 1829; Van Buren to Vaughan dated May 11, 1829 and Vaughan to Van Buren dated June 8, 1829. The quote comes from Van Buren’s letter of May 11 and is on page 18.

British accepted this arbitration as they retained control of the Grand Communications Route. However Maine was opposed to the arbitration, as it would lose almost half of the land it claimed. Following a vigorous lobbying campaign in Washington, Maine convinced the United States government to reject the arbitration. While this was happening, Maine took two measures to attempt to exercise control over the disputed territory. The first was to incorporate Madawaska as a town within the County of Penobscot on March 15, 1831. Subsequently, Walter Powers of Madawaska was authorized to call a meeting on 20 August 1831 for the purpose of electing town officials.<sup>93</sup> Ten American settlers and about 20 French ones attended the meeting but not all voted. The meeting was held at the house of Captain Peter Lizotte of the New Brunswick militia. Two other militia officers, Leonard R. Coombes and Francis Rice, were also present. In his capacity as a Justice of the Peace, Rice protested against the meeting, as it was illegal, but to no avail. Eight American citizens were elected to the town offices. Another meeting was held on 12 September to elect a representative to the Maine State Legislature. This time, between 50 and 60 residents were present. Again, Francis Rice attended the meeting and protested against the election on behalf of the British authorities. Peter Lizotte [Lizotte] was elected but, on reflection, later declined the honour. John Baker played an active role in both meetings.<sup>94</sup>

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<sup>93</sup> Chipman. Remarks. Appendix No. 111. Report of the Trial of Barnabas Hannawell, Jesse Wheelock and Daniel Savage as copied from the Fredericton Royal Gazette of October 19, 1831. pp. xvii, xiv, xx, xxi, and xxiv

<sup>94</sup> British Parliamentary Papers, United States of America, Canadian Relations, Volume 11 (BPP/USA/CR). Shannon: Irish University Press, 1972. pp. 165-167. Depositions by L.R. Coombes dated 24 September 1831 and Francis Rice dated 22 September 1831.



The second measure was an attempt to make land grants and force the inhabitants to declare they were citizens of Maine. In a Resolve approved on March 31, 1831, Maine decided to conduct a census of the settlers in the disputed territory with a view to “quieting the settlers in their possessions”. John E. Dean and Edward Kavanagh, two staunch supporters of Maine’s claim to the area, were appointed to the task.<sup>95</sup> They conducted their census between 24 July and 7 August. In addition to collecting information, they also threatened the residents of the Madawaska settlement with the loss of their land if they did not declare themselves to be citizens of Maine. If they did so declare, then they would be confirmed in their existing grants or be given 100 acres of land for free, less a five-dollar survey fee. Their presence quickly became known in Fredericton. James A. MacLauchlan, who was now the Warden of the Disputed Territory, caught up with them on 3 August and challenged them about their mission. For some reason, perhaps to avoid escalating any tensions following the news of the arbitration by the King of the Netherlands, MacLauchlan did not force them to cancel their census but only accompanied them during their remaining time in the area.<sup>96</sup> In a later statement, MacLauchlan said that he had instructions from the Chief Justice to just protest their actions if they confined themselves to the west side of the river. However, had they crossed to the

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<sup>95</sup> *Ibid.* p. 162. Resolve of the State of Maine dated March 31, 1831 and Appointment of Dean and Kavanagh dated April 2, 1831.

<sup>96</sup> *Ibid.* p. 165. Deposition of Peter Lizette dated 23 September 1831.

north side and attempted to continue in their mission, he would have prevented this by force.<sup>97</sup>

William Black was the civilian administrator of New Brunswick during the absence of Sir Howard Douglas and this may account for why Dean and Kavanagh were not dealt with in a more forceful manner. This changed on 8 September 1831 when Major General Sir Archibald Campbell became the new Lieutenant Governor.<sup>98</sup> He took firm action to deal with Maine's incursions into the disputed territory. The events were reported to Charles Bankhead, the British Minister in Washington, who relayed the report, with a strong note of protest, to Edward Livingston, the American Secretary of State.<sup>99</sup> At about the same time, Campbell proceeded to Madawaska with a small party that included Warden MacLauchlan, Charles Peters the Attorney General and Edward Winslow Miller the High Sheriff of the Country of York. He arrived there on 23 September, organized a posse led by Captain Leonard Coombes, and then began to arrest the American and French settlers who had participated in the meetings. Four Americans – Barnabas Hannawell, Daniel Savage, Jesse Wheelock and Daniel Bean – were apprehended and sent to Fredericton for trial. Their crimes were disturbing the peace, attempting to “estrangle the French inhabitants from their allegiance [to the crown]” and trying

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<sup>97</sup> Chipman. Remarks. Appendix No. 111. Report of the Trial of Barnabas Hannawell, Jesse Wheelock and Daniel Savage as copied from the Fredericton Royal Gazette of October 19, 1831. p. xviii.

<sup>98</sup> Dictionary of Canadian Biography. Vol. VII (1836-1850). Toronto: University of Toronto Press, 1988. pp. 139-141. Entry for Sir Archibald Campbell.

<sup>99</sup> Van Buren. Maine Boundary. p. 23. House Doc. No. 126. Bankhead to Livingston dated October 1, 1831.

to “transfer the possession of this district of the province [to Maine]”.<sup>100</sup> The Americans were found guilty and sentenced to jail and a fine. Among the other Americans who were involved was John Baker, who escaped to the woods. Baker proceeded to Portland, Maine where he swore a colourful and dramatic statement under oath about the arrests and his escape. About 30 French settlers were also arrested, but released on bail.<sup>101</sup>

There is some uncertainty about the role of the military in these arrests. The accepted version seems to indicate that they were involved in what would be recognized today as an “aid to the civil power” role. In his deposition, John Baker reported hearing about “a military force collecting at the Madawaska chapel” and the next day he saw “about 20 canoes coming up the St. John, apparently in great haste, with one or more men in each”. Baker then fled to the woods from where he observed that they had “posted sentinels armed with muskets” at his house. Another extract from Baker’s statement reports that later in the day he saw “a horse-boat with fifty armed men” going up stream in search of other fugitives. In a letter written to the Secretary of State of Maine by Wheelock and Savage shortly after they were taken prisoner, they refer to Sheriff Miller and Captain Coombes “with some militia” going to Baker’s to arrest him.<sup>102</sup> This account has been interpreted to mean that Campbell had taken a military force to Madawaska with him. While this has

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<sup>100</sup> BPP/USA/CR, p. 164. Peters to Campbell dated September 24, 1831 and October 2, 1831. UNB. LGNB Despatches Received Vol. XXI, 1840. Statement by Leonard Coombes dated 1 May 1840

<sup>101</sup> Collins, Rev. Charles W. The Acadians of Madawaska, Maine. Boston: Thomas A. Whalen & Co., 1902. pp. 43-46. Transcriptions of the deposition of John Baker dated 12 October 1831 and a letter by Jesse Wheelock and Daniel Savage dated o/a 30 September 1831, as quoted from Resolves of Maine, 1829-1835, pp. 473-496. Scott. Ties of Common Blood. p. 87-89.

<sup>102</sup> Collins. Acadians. pp. 45-46.

been repeated in several publications, it cannot be substantiated.<sup>103</sup> A search of the history of the British regiment that was garrisoning New Brunswick at the time, the 1<sup>st</sup> Battalion of the Rifle Brigade, revealed no mention of a detachment going to the Madawaska settlement.<sup>104</sup> The Royal Gazette of 5 October 1831 reported that Lieutenant Governor Campbell, Attorney-General Peters, Warden MacLauchlan and Sheriff Miller had been in Madawaska but there is no mention of any troops accompanying them. If the military were present, it would likely have been the Madawaska militia and not the British regulars.

However, the statements by those involved still do not entirely resolve the uncertainty. In a statement given in 1840, Leonard Coombes said that he, acting as a Captain of Militia, had mustered a posse in September of 1831 to arrest Wheelock, Savage and Hannawell.<sup>105</sup> He would, no doubt, have sworn in reliable members of his militia. This would account for the apparent use of militia arms, the military appearance of the posse and the lack of any definitive evidence of military involvement in the arrests. A report on the events by Attorney General Peters offers the suggestion that posse was raised at the request of Sheriff Miller who had been given warrants to arrest the offenders by Justices MacLauchlan and Rice.<sup>106</sup> Based

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<sup>103</sup> Facey-Crowther. New Brunswick Militia. p. 55, stated that Campbell led "a detachment of regulars" to the Madawaska settlement; Carroll. Good and Wise Measure. p. 201, states that Campbell "led a large armed party" to Madawaska; W.O. Raymond "State of the Madawaska and Aroostook Settlements in 1831" Collections of the New Brunswick Historical Society (St. John , N.B.) No. 19 (1914) p. 362, states "In making the arrests, the Sheriff had the assistance of Captain Coombes and a company of militia".

<sup>104</sup> NSARM. WO 17/2378.

<sup>105</sup> UNB. Loyalist Collection. LGNB. Despatches Received Vol. XXI, 1840. Statement by Leonard Coombes dated 1 May 1840

<sup>106</sup> BPP/USA/CR. p. 164. Charles T. Peters, Attorney-General, to Lieutenant Governor Campbell, dated October 2, 1831.

on the evidence, the Madawaska militia was not involved *per se* but it is highly probable that the posse was formed from its members and that they were armed with the militia muskets. At this time, the three leading New Brunswick militia officers in the disputed territory, and the Madawaska settlement in particular, were James A. MacLauchlan, Francis Rice and Leonard R. Coombes. Conveniently, they were also Justices of the Peace. In addition, MacLauchlan held other authority as the Warden of the Disputed Territory, as a Deputy Surveyor of Crown Lands and as a Seizing Officer.<sup>107</sup> This blend of military and legal powers made them very effective representatives of the Provincial government within the disputed territory.

This crisis generated a series of letters from Campbell to Lord Goderich, at the Colonial Office, about the defence of the Line of Communications to Canada. Campbell recommended establishing a post at Woodstock to guard the American garrison at Houlton, a “strong post of communication and defence” at the mouth of the Madawaska and a post at Lake Temiscouata. He was concerned that the military forces of New Brunswick, both H.M Troops and militia, were totally inadequate to meet any hostile activities. He only had “six companies of rifles and a very few artillery men” at his disposal plus the militia which included a battalion of disorganized militia above the [Grand] Falls i.e. in the Madawaska Settlement. Prophetically, he wrote “Eventually we should be compelled to make a stand when our lines of communication were interrupted”. He also confirmed that the Madawaska Settlement extended from about four miles above Grand Falls for a

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<sup>107</sup> MacLauchlan also held appointments as the Supervisor or Commissioner of the Great Road from Fredericton to the Canada Line and as the Superintendent of Indian Affairs in the area of the Madawaska settlement.

distance of roughly 60 miles along both banks of the St. John River. Campbell was clearly advocating the policy of forward defence that his successor, Sir John Harvey, would follow.<sup>108</sup>

Following the events of 1831, the frontier was relatively quiet for a period of six years. Then, in December of 1836, the United States government found that it had collected excess funds and President Andrew Jackson decided to return this money to the individual states.<sup>109</sup> Maine, for its part, resolved to distribute its funds on a per capita share based on a special census. Ebenezer Greely was hired to conduct the census in the Madawaska settlement. From the British perspective, this was an unwarranted attempt by Maine to exercise jurisdiction in the disputed territory and ran counter to the understanding between the British and American governments. To add further provocation, Greely told the inhabitants that they would receive up to 12 shillings and 6 pence per head if they would declare that they were citizens of Maine. When approached by British authorities on 29 May 1837, Greely refused to stop his census and was arrested. He was taken to Woodstock where the sheriff released him. Greely returned to Madawaska and his census only to be arrested again on 6 June. This time he was taken to the Fredericton gaol. The arrest created great excitement in Maine, and both the Maine and American governments put pressure on the British to release Greely. While continuing to protest the intrusion by Maine, the British released Greely on 8 August 1837 in a

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<sup>108</sup> UNB CO 188 New Brunswick Dispatches Sent. Campbell to Goderich dated 17 September, 4 and 5 October 1831.

<sup>109</sup> Scott, Ties of Common Blood, p. 98. She referenced President Andrew Jackson's Eight Annual Message of December 5, 1836.

gesture of good will.<sup>110</sup> As this was transpiring, Maine issued a Militia General Order on June 27, 1837 that declared the “soil of our State has been invaded” and called on the Federal Government to have Greely released. Failing that, the militia was to hold itself in readiness “to obey such orders as the security of our citizens and the honor of the State may require”.<sup>111</sup>

The new Lieutenant Governor of New Brunswick, Major General Sir John Harvey who had taken up his post on 1 June 1837, found himself in the middle of this crisis. For his part, Harvey saw Greely’s willingness to be peacefully arrested on two occasions to be suspicious. He wondered if this might be part of “a diversion in favor of the Papineau party, by preventing reinforcements of troops being sent from Nova Scotia, or from hence [New Brunswick] to that province [Lower Canada]”.<sup>112</sup> The unrest was growing in the Canadas would soon become the Rebellions of 1837 and 1838. Harvey, having served on the Niagara Frontier during the War of 1812 with members of the 104<sup>th</sup> Foot, was aware of their winter march and of the importance of the Grand Communications Route. While continuing to protest Maine’s actions, Harvey, on the recommendation of H.S Fox, the British Minister in Washington, released Greely on 8 August 1837 as a gesture of good will.<sup>113</sup>

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<sup>110</sup> BPP/USA/CR, p. 206. Robert P. Dunlop, Governor of Maine to John Forsyth, Secretary of State, dated July 3, 1837; p. 214. Warrant for the Arrest of Ebenezer Greely signed Francis Rice, J.P. and L.R. Coombes, J.P. dated 29 May 1837.

<sup>111</sup> Ibid. pp. 212-213. Maine Militia General Order dated June 27, 1837.

<sup>112</sup> Ibid. pp. 211-212. Sir John Harvey to Lord Glenelg dated July 6, 1837.

<sup>113</sup> Ibid. p. 216. Sir John Harvey to Lord Glenelg dated July 31 1837 with notes dated August 3 and August 8.

Greely, having returned to Maine, came back to New Brunswick in late August with the stated purpose of resuming his census. There were also “rumours ... of an intended mustering of militia volunteers on the frontiers of Maine”.<sup>114</sup> Harvey sent G.F. Street, the Solicitor General to Woodstock, where he and Warden MacLauchlan met with Greely. Greely reaffirmed that he was going to continue with his census and, if arrested, Maine would send another to replace him “with sufficient force to protect and support him in the act”.<sup>115</sup> Greely returned to Madawaska where he was arrested and returned to the Fredericton gaol. On 10 September, Harvey wrote to Governor Dunlop and asked him to restrain Greely in order to prevent collision.<sup>116</sup> Meanwhile, Harvey shared his concerns with Major General Campbell in Halifax when he wrote, on 12 September, that “The Frontier Militia of Maine are represented to be full of fight and they are known to be as little under the restraint of their own government as that Government is of the General one”.<sup>117</sup> Harvey was genuinely concerned that Maine would make an armed incursion into the disputed territory to support Greely or his successor.

These concerns prompted Harvey to take action and he decided that a show of force was needed to forestall any military action by Maine and to reassure the inhabitants of the disputed territory. Two companies of the 43<sup>rd</sup> Regiment left Fredericton on 15 September. One was stationed in Woodstock where it could guard the Houlton road. The other company went on to Grand Falls. The two companies

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<sup>114</sup> *Ibid.* p. 219. Harvey to H.S. Fox dated August 29, 1837.

<sup>115</sup> *Ibid.* pp. 219-220. G.F. Street to Sir John Harvey dated September 5, 1837.

<sup>116</sup> *Ibid.* pp. 221-223. Harvey to Dunlop dated September 10, 1837.

<sup>117</sup> PANB. RS 344. Harvey to Campbell dated September 12, 1837.



also took 500 stands of arms for the militia with them. To add emphasis to the demonstration, Harvey made a visit to Grand Falls.<sup>118</sup> Harvey received a reply from Dunlop in early October. In it, Dunlop avoided Harvey's request by saying that he did not have the authority to recall Greely as the legislature and not the governor of Maine had hired Greely. He also confirmed his desire "that every occasion of collision or jealousy may be avoided".<sup>119</sup> Reading between the lines, Dunlop did not appear to be prepared to push the matter any further. Based on Dunlop's reply to his letter of 10 September and satisfied that he had made his point, Harvey withdrew the two companies starting on 10 October. In a letter dated October 12, Harvey advised Dunlop of the redeployment and assured him that the purpose of it had been to "give protection and support to the civil authorities, in enabling them to resist any attempts which might be made by 'armed' citizens of the State of Maine to renew any exercise of jurisdiction within the 'Disputed Territory'".<sup>120</sup> The diplomatic niceties had been maintained even as the mailed fist had been raised for action.

While the Greely affair was ongoing, Harvey was encountering difficulties with Sir Colin Campbell in Halifax. In addition to being the Lieutenant-Governor of Nova Scotia, he was also the Commander-in-Chief of Nova Scotia Command that included New Brunswick, Prince Edward Island and Newfoundland. While Harvey had adopted the forward defense strategy of his predecessor, Campbell favoured holding the Regular troops back from the frontier in centralized locations where they

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<sup>118</sup> Anonymous, A Shrivelled Old Medlar. "Journal of the Movements of the 43<sup>rd</sup> Regt. in North America". *United Services Journal*, August 1838. pp. 462-464.

<sup>119</sup> *BPP/USA/CR*, pp. 221-223. Dunlop to Harvey dated September 27, 1837.

<sup>120</sup> *Ibid.* p. 223. Harvey to Dunlop dated October 12, 1837.

could be more easily reinforced and, if appropriate, supported by the Royal Navy. His opinion was, “if there is to be a War with the United States, the Battles will not be fought in the Wilderness but on the coasts, Harbours and Towns”.<sup>121</sup> In a letter of 10 July 1837, Harvey advised Campbell that the difficulty with Maine might require a reinforcement of troops to New Brunswick and asked that the regiment in Halifax that was designated for this task be held ready. Harvey also indicated that he would assume command of the troops in New Brunswick should an incursion from Maine occur. Campbell demurred, indicated that the designated regiment had left the Command without replacement and that he hoped that Harvey would not need to call upon him for aid.<sup>122</sup> In another letter of 12 July, Harvey restated his mandate to “firmly...maintain British Possession and Jurisdiction” within the disputed territory. As for the boundary issue, Harvey thought it should be settled on the basis of “our retaining a Line of Communication, within the limits of our Territory, betwixt” Canada and New Brunswick. He closed the letter by despairing of being able to stop an incursion by “our Blustering Neighbours” as he only had “a few three pounders and a weak battalion of the line” for troops and inadequate supplies to arm and equip the militia.<sup>123</sup> Harvey and Campbell would continue to disagree about the proper manner to defend New Brunswick until Campbell was replaced in 1840.

The political unrest in the Canadas that had concerned Harvey reached a crisis in the late fall of 1837. In Lower Canada, the Patriotes under Papineau rose in

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<sup>121</sup> PANB. RS 344. Harvey to Marquis of Normanby dated 10 July 1839 in which he quotes from an earlier letter from Campbell.

<sup>122</sup> Ibid. Harvey to Campbell dated 10 July 1837 and Campbell to Harvey dated 19 July 1837.

<sup>123</sup> Ibid. Harvey to Campbell dated 12 July 1837.

open rebellion and clashed with the British regulars at St. Denis, St. Charles and St. Eustache in November and December of 1837. Sir Francis Bond Head, the Lieutenant-Governor of Upper Canada sent his only battalion, the 24<sup>th</sup>, to Lower Canada in November, to assist there. This left the province undefended, which paved the way for William Lyon MacKenzie to start his revolt on 4 December 1837. The local militia quickly put down this uprising.<sup>124</sup> The Americans were outraged in December 1837, when members of the Canadian Militia made an unauthorized raid into New York State and seized and burned the supply boat, the Caroline that MacKenzie's rebels were using.<sup>125</sup> As the crisis in Lower Canada developed, Sir John Colborne, the Lieutenant-Governor and Commander-in-Chief of Canada Command, sent a request to Campbell in Halifax for reinforcements of at least two regiments.<sup>126</sup> This was the start of a massive reinforcement of Canada Command, which would increase its strength from 3,150 to 10,271 by the fall of 1838.<sup>127</sup> Because of the annual freeze-up of the Saint Lawrence River, the only means of moving reinforcements to Canada before spring was by the "Grand Communications Route" through New Brunswick.

The first regiment to move was the 43<sup>rd</sup> that was garrisoning New Brunswick. It had to wait until freeze-up and the opening of the winter road to Quebec. While small parties could use the route year round, it was only suitable for large movements of men and equipment during the winter months. Meanwhile,

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<sup>124</sup> Francis, R. Douglas, Richard Jones and Donald B Smith, ed. Origins: Canadian History to Confederation. Toronto: Harcourt Canada, 2000. pp 274, 275 and 305.

<sup>125</sup> Ibid. p. 308.

<sup>126</sup> PANB. RS 344. Harvey to Fox dated 10 November 1837

<sup>127</sup> NSARM. WO/17/1542.

Harvey had directed James MacLauchlan, the Warden of the Disputed Territory, to have a rough road cut out along the right bank of the Madawaska River and to construct huts, or cabanos, at the overnight stopping places where civilian buildings were not available. This included the sites at Dégelis and Cabano, Quebec.<sup>128</sup>

MacLauchlan was well qualified to oversee this work as he also held the appointment of Supervisor of the Canada Line of Road. The Canada Road was one of the Great Roads of New Brunswick.<sup>129</sup> The 43<sup>rd</sup> left Fredericton during the period of 11 to 15 December and had arrived in Quebec by 1 January 1838. During this time, the 85<sup>th</sup> Regiment had left Halifax, arrived in Saint John and had begun its march to Canada. They were traveling about two days behind the 43<sup>rd</sup> and passed through Fredericton between 17 and 20 December. The two regiments took two twelve-pounder cannonades and a cohorn with them, which were mounted on sleighs. This was a preventive measure that would allow them to sweep away any opposition that they might encounter whilst moving up the Saint Lawrence River to Quebec.<sup>130</sup> The 34th Regiment and the 8th Company of the 4th Battalion, Royal Artillery, followed them in January 1838. All told, almost 1,500 men had traveled the “Grand Communications Route” between 11 December 1837 and the end of January 1838.<sup>131</sup>

Unlike the 104<sup>th</sup> Regiment in 1813, the troops were able to travel all of the way by sleigh. The trip from Fredericton to Quebec City took approximately 13

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<sup>128</sup> PANB. RS 344. Harvey to Colborne dated 25 November 1837.

<sup>129</sup> PANB. Journal of the Legislative Counsel for 1840. p. 725. The Report of James A. MacLauchlan, esquire, Supervisor of the Canada Line of Road.

<sup>130</sup> PANB. RS 344. Harvey to Colborne dated 15 December 1837.

<sup>131</sup> Ibid. Harvey to Lord Somerset dated 14 February 1837.

days. The Commissariat arranged overnight stops at about 25-mile intervals. Two-horsed sleighs were used in New Brunswick but they had to switch to single-horsed cabriolets at the juncture with Canada Command at Cabano because the portage road was too narrow for the wider New Brunswick sleighs. The route followed went over rough roads and river ice. When the 85<sup>th</sup> crossed the Aroostook River, they had to use boats, as the ice was unsafe. While there are few details about the civilian contractors who provided the sleighs, it is known that L. R. Coombes was paid to transport the troops through the Madawaska settlement. The troops were kitted out, at their expense, with moccasins, fur caps, mitts and extra blankets to help them cope with the temperatures that ranged from -27° F to -4° F. However, it did not appear from contemporary accounts to have been an unpleasant trip and it was soon over.<sup>132</sup> This journey captured the attention of the Duke of Wellington who is quoted as having said, in relation to the march of the 43<sup>rd</sup> Regiment, that is was “one of the greatest feats ever performed, and the only military achievement performed by a British officer that he really envied”.<sup>133</sup> This was high praise indeed. Meanwhile, Harvey remained concerned about the defence of New Brunswick and the security of public stores. Fortunately, the 65<sup>th</sup> regiment has just arrived in Halifax from the West Indies as the garrisons there were being reduced in order to provide reinforcements for British North America. Harvey asked Campbell to forward two

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<sup>132</sup> Barrett, C.R.B., ed. The 85<sup>th</sup> King's Light Infantry. London: Spottiswoode & Co. Ltd., 1913. 263-268. Anonymous. “Overland March of the 85<sup>th</sup> Regiment from New Brunswick to Canada”, United Services Journal, (April) London, 1838. 478-483; PANB. RS 8 – Militia and Regular Army Accounting Correspondence 1831-1838. [Captain and Justice of the Peace] L.R. Coombes received £78 for transporting the 43<sup>rd</sup> Regiment..

<sup>133</sup> PANB MS 15/37. Playfair, Col. A.W. “Letter to the Editor of the British Standard”. Bathurst, C.W.: 20 January 1862.

companies of the 65<sup>th</sup> and a company of artillery to him. This would be adequate to augment the militia that had been called out to perform garrison duty.<sup>134</sup> Campbell agreed but only sent the infantry, which arrived in Fredericton in late January 1838. While the record is not clear, it appears that some militiamen were called out to perform guard duties in Fredericton and perhaps Saint John for a brief period.<sup>135</sup>

Because of the recent tensions on the border, Harvey was also concerned about the American response to the troop movements through the disputed territory. In a letter to Lord Gosford, Harvey said “I consider the right to such a passage [of troops to Canada as was done during the late war] for our troops to be as undisputed as for our couriers”.<sup>136</sup> Harvey had also written to Minister Fox in Washington to see if the United States Government would object to this.<sup>137</sup> Fox, in turn, wrote to Forsyth advising him of the pending troop movements and the reason for it. Forsyth did not object and forwarded the same information to Dunlap.<sup>138</sup> This good will did not alter Maine’s stance on the boundary issue. Maine had formed a joint select Committee to review a British and American proposal to form a new joint Commission of Exploration and Survey to find the boundary line. In its report that was issued in early March 1838, the committee found that the troop movements were “a palpable outrage on the sovereignty of Maine, and of the United States, and

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<sup>134</sup> PANB. RS 344. Harvey to Campbell dated 7 January 1838

<sup>135</sup> *Ibid.* Harvey to Campbell dated 1 March 1838. This concerned problems with the pay for the “militia guards” who had performed their duties during the absence of HM Troops.

<sup>136</sup> *Ibid.* Harvey to Campbell dated 20 November 1837.

<sup>137</sup> *Ibid.* Harvey to Fox dated 10 November 1837.

<sup>138</sup> Van Buren. Maine Boundary. pp. 408–409. House Doc. No. 74. Fox to Forsyth dated November 28, 1837, Forsyth to Fox dated December 2, 1837 and Forsyth to Dunlap dated December 5, 1837.

a fresh cause of complaint”.<sup>139</sup> Nonetheless, the troop movement went ahead without any interference from Maine. Harvey was right to be concerned about this possibility as many American citizens along the border with British North America sympathised with the rebels and some gave them active support.<sup>140</sup> Fortunately, there was “not one single act of border inroad or encroachment” from Maine during this period. In light of this goodwill, Harvey, in response to private requests by the Governor and other politicians of Maine, released Greely in February of 1838.<sup>141</sup>

The situation in Upper and Lower Canada remained tense throughout 1838. A review of the troop dispositions shows a country under occupation with forces stationed in the major towns and cities.<sup>142</sup> Many of the rebels had fled to the United States where they found active support from anti-British sympathizers who called themselves Patriot Hunters. They were organized into Lodges in most of the northern States. There were also up to 99 Lodges in Maine.<sup>143</sup> General Winfield Scott spent much of the winter of 1837/38 on the Canadian frontier engaged in an early form of “shuttle diplomacy” meant to calm the Americans living along the border in the Northern States.<sup>144</sup> The Rebellions broke out again in Lower Canada with a Patriote uprising at Beauharnois on 4 November and raids across the border

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<sup>139</sup> BPP/USA/CR, pp. 314-319. Report of the joint select Committee dated o/a March 1838.

<sup>140</sup> Scott, Winfield. Memoirs of Lieut.-General Scott, LL.D. Vol. I. New York: Sheldon & company, 1864. p. 305.

<sup>141</sup> BPP/USA/CR, p.234. Harvey to Glenelg dated February 2, 1838.

<sup>142</sup> NSARM. WO 17/1542.

<sup>143</sup> Scott. Ties of Common Blood, p. 121. Quoted a London Morning Chronicle article that was republished in the Journal of Commerce on 15 November 1841. See Corley Albert B. The Crisis of 1830-1842 in Canadian-American Relations. New York: Russell & Russell, 1941, pp. 75-76, for the list of lodges in the United States and British North America that appeared in the London Morning Chronicle.

<sup>144</sup> Scott. Memoirs, p. 309

from the United States at Lacolle and Odelltown on 7 and 9 November. In Upper Canada, a group of Hunters attacked Prescott and the Battle of the Windmill was fought on 16 and 17 November 1837.<sup>145</sup> Even though six regiments of infantry and two regiments of cavalry had reinforced Canada during the summer, the call went out again for more troops. Once more, Nova Scotia Command was the closest source. The 65<sup>th</sup> regiment left Fredericton in mid-November, marched to Shediac, and boarded a ship for Quebec. The 11<sup>th</sup> Regiment moved forward from Halifax and left New Brunswick for Quebec via the land route in late December. A company from each of the 65<sup>th</sup> and 95<sup>th</sup> Regiments and the 1<sup>st</sup> Company of the 4<sup>th</sup> Battalion, Royal artillery followed them. The last of these units had arrived in Canada Command by 15 January 1839. In total, 776 troops moved over the “Grand Communications Route” during December 1838 and January 1839.<sup>146</sup>

#### **The Aroostook War – 1839.**

Meanwhile, the Border Controversy was about to burst open. Maine continued to chaff at the apparent “understanding” between Washington and London concerning the interim jurisdiction exercised by Great Britain in the disputed territory. In early 1838, Great Britain suggested to the United States that another effort should be made to settle the boundary by either defining it by another survey or, if this was not successful, by a negotiated solution. When this was communicated to Maine, Edward Kent, the new Governor, formed a Joint Select Committee on the North Eastern Boundary to consider it. The Committee’s report

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<sup>145</sup> Francis. *Origins*. pp. 276, 277 and 308.

<sup>146</sup> NSARM. WO 17/2384 (1837) and 2385 (1838); LAC WO17/1543 (1839).



upheld all of Maine's territorial claims and recited all of Maine's grievances about the British administration of the disputed territory.<sup>147</sup> Based on this report, the State Legislature passed a Resolve on 23 March 1838 whereby Maine would "insist on the line established by the treaty of 1783".<sup>148</sup> Not surprisingly, a survey commissioned by Maine in 1838 found evidence that supported the largest extent of Maine's territorial claims. The resurfacing of another source of friction followed this strong reaffirmation of Maine's claim to all of the disputed territory. The problem of illegal timber cutting continued and Maine was concerned about the loss of revenue that this meant. On 14 December 1838, the Land Agents of Maine and Massachusetts appointed George W. Buckmore to go to the Aroostook and Fish Rivers to report on and stop any trespassing. The term "trespass" was used to refer to the illegal cutting of timber. Buckmore reported that he had found large-scale timber cutting operations on those rivers. This report prompted Governor Fairfield to recommend to the Maine Legislature that the Land Agent be sent to these areas "with a sufficient number of men suitable equipped, to...disperse those who are engaged in this work of devastation and pillage". Governor Fairfield estimated the value of the timber cut to be \$100,000. Meeting in secret session, the Maine Legislature passed a Resolve on 24 January 1839 that authorized the Maine Land Agent, Rufus MacIntire, to "arrest, detain and imprison all persons found trespassing

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<sup>147</sup> BPP/USA/CR. pp. 314-319. Report of the Maine Select Committee on the North Eastern Boundary o/a 15 March 1838.

<sup>148</sup> Burrage. Maine in the Northeastern Boundary Controversy. p. 228. Cites the Resolves of Maine.

on the territory of this State” and voted \$10,000 to fund the operation. With this unilateral action, conducted in secret, the Aroostook War was about to begin.<sup>149</sup>

McIntire and Hastings Strickland, the Sheriff of Penobscott County, set off for the Aroostook soon afterward with a force of about 200 men. This group was referred to as the “civil posse”, the “armed posse” or just the “posse”. They left Bangor on 5 February and proceeded along what is now Maine Route 11 towards township No. 10 (now Masardis). Because of their speedy deployment, the only opposition they faced was from the lumbermen. The “lumbermen’s resistance” was loosely organized and based on lumbering interests in Woodstock. Prior to the posse’s arrival at Marsardis, it was reported that they had encountered a group of approximately 300 trespassers, or lumbermen. When the trespassers saw that the posse was armed with a brass three-pounder cannon, they prudently withdrew. This event is difficult to verify. While it is mentioned in a letter written by Fairfield, it is not included in McIntire’s annual report for 1839. As the posse moved down the Aroostook River, the only opposition came from a group of 10 to 12 lumbermen who were trying to escape with their horse teams. Shots were fired and the posse captured the lumbermen and their teams. Elements of the posse continued on to a location just west of present day Fort Fairfield. Meanwhile, the lumbermen under the apparent leadership of Asa Dow, had been watching the posse’s movements and planned to take action against them. In order to arm themselves, the lumbermen broke into the militia arms stores in Woodstock and brought a number of muskets to

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<sup>149</sup> BPP/USA/CR, pp. 382-383. Fairfield to the Maine Legislature dated 23 January 1839 and Resolve of the State of Maine dated 24 January 1839.

Tibbetts' in Tobique (Perth-Andover, NB). Leaving the main body of the posse behind, McIntire and a few others carried on to James Fitzherberts' house (Fort Fairfield) where McIntire planned to spend the night of 11/12 February and meet with Warden MacLauchlan. Later the same evening, once they had received word of McIntire's location, about 24 lumbermen went to Fitzherbert's where they captured McIntire and four other men. They transported them by sleigh first to Woodstock and then on to the Fredericton gaol. The remaining posse hastily returned to Masardis where they built a fortified position.<sup>150</sup> Strickland, who had avoided capture, then made a hasty ride to Bangor to advise the authorities of these events. In retaliation, the posse arrested James MacLauchlan and Captain Benjamin Tibbetts, when they visited the camp at Marsardis on 16 February, and sent them off to Bangor. Both groups were released about a week later.<sup>151</sup>

When he heard about these events, Harvey tried to defuse the situation by telling Fairfield that, if the posse were withdrawn, Harvey would take measures to protect the timber by establishing a boom and a "seizing officer" on the Aroostook River. Any illegal timber would be sold a public auction and the proceeds deposited in the "Disputed Territory Fund". He also offered to set up booms on Upper St. John River and its tributaries. While not specified, this would have included the

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<sup>150</sup> BPP/USA/CR, p 384. Fairfield to Maine House of Representatives dated 15 February 1839; Maine State Archives. Legislative Graveyard 1840 Box 136 Folder 28. Report of Land Agent dated January 3<sup>rd</sup> 1840. pp 1-3. Fairfield mentioned the encounter with 300 lumbermen in early February but McIntire's Report of the Land Agent for 1839 did not. It is therefore debateable whether this encounter was fact or fiction; Scott. Ties of Common Blood. pp. 130-137. Cites from The Queen versus McIntire, Cushman, Bartlett and Webster dated February 18, 1839 (PAC COP 188 B16).

<sup>151</sup> BPP/USA/CR. pp. 392/393. Fairfield to Maine Legislature dated 18 February 1839. Some authors have reversed the capture sequence and have stated that MacLauchlan was the first one arrested. Most recently, this mistake was contained in Jones, To the Webster-Ashburton Treaty, p.37. The source of this confusion appears to be Burrage, Maine, p.259.

Fish River. If the posse were not withdrawn, then Harvey would use force to prevent “an interference with...[the British]...possession and jurisdiction” of the disputed territory.<sup>152</sup> Fairfield’s reply restated Maine’s right to continue to act as it was and indicated that Maine would meet any use of force with force.<sup>153</sup> The previous day, Maine had passed a Resolve for the protection of public lands that authorized the dispatch of a military force to the Aroostook River.<sup>154</sup> Acting in support of Maine, the United States Congress passed a bill on 3 March 1839 that authorized the President to call out up to 50,000 militiamen.<sup>155</sup> Surrounding states and provinces also offered their support should a “collision” occur.<sup>156</sup> So, as diplomatic notes and protests began to fly between Fredericton, Augusta, London and Washington and war fever began to rage on both sides of the border, the build up of forces began.

Fairfield appointed Colonel Charles Jarvis as the acting Maine Land Agent in place of McIntire, and sent him to the Aroostook with “about 600 good and effective men, making the whole force now about 750”. Jarvis set about building a boom across the Aroostook River at Fort Fairfield and improving the roads into the area. While his main base was Fort Fairfield, his force was scattered between there and secondary posts at Marsardis, Ashland (Fort Machias?) and along the roads they

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<sup>152</sup> BPP/USA/CR. p 288. Harvey to Fairfield dated 13 February 1839.

<sup>153</sup> *Ibid.* p 389. Fairfield to Harvey dated 19 February 1839.

<sup>154</sup> *Ibid.* pp 387-388. Resolve for the protection of public lands dated February 18, 1839.

<sup>155</sup> *Ibid.* pp 408-409. Law For the Defense of the United States dated 3 March 1839.

<sup>156</sup> Scott. *Ties of Common Blood*. p. 152. Cites a letter from Barnes to Fairfield dated 21 February 1839 that offered assistance from Massachusetts and Journal of the Legislative Council of New Brunswick for 1839. p. 482. This reported an offer of support from Nova Scotia.

were building.<sup>157</sup> On 16 February, Major General Hodsdon was ordered to muster a force of 1,000 militia and proceed to the Aroostook River to assist the land agent in carrying out the Resolve of 24 January. Three day later, General Order No. 7 ordered a draft of 10, 343 men from the eight division of the Maine militia to be ready for active service.<sup>158</sup> This draft represented about a quarter of the militia, which numbered 43, 896 in 1838.<sup>159</sup> Over the next month, a series of General Orders would call a total of 2, 904 Maine militiamen to active duty. Of these, 1,068 were with Hodsdon's force. Another 600 or so were part of Brigadier General Batchelder's force while 369 were in Calais under Major General Foster. The remainder was still mustering in southern Maine when the war ended. The American Army garrison of 120 artillerymen at Hancock Barracks in Houlton remained neutral throughout the crisis although Fairfield had asked President Van Buren for their assistance.<sup>160</sup>

Meanwhile, Harvey was taking similar actions. In a series of Militia General Orders, which were published in the Royal Gazette, the militia battalions of Carleton, York and Charlotte counties and of the Saint John City Militia were ordered to make a draft of up to one fourth of their strength.<sup>161</sup> These drafted militiamen could then be called to active service, or embodied, on short notice. The

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<sup>157</sup> BPP/USA/CR. 392. Fairfield to Maine Legislature dated 21 February 1839.

<sup>158</sup> Aroostook War. Historical Sketch and Roster of Commissioned Officers and Enlisted Men Called into Service for the Protection of the Northeastern Frontier of Maine From February to May, 1839. Augusta, Me: n.p., 1904. pp. 7 and 9.

<sup>159</sup> Scott. Ties of Common Blood. p. 113. Cites Report of the Adjutant General for 1838.

<sup>160</sup> Aroostook War. Count of index of names in the annex. Scott. Ties of Common Blood. p, 331. Cites United States Army Returns for the 1<sup>st</sup> Artillery at Hancock Barracks for February 1839 (National Archives RG 94). IIUP. BPP/USACR. p. 389. Fairfield to Van Buren dated 19 February 1839.

<sup>161</sup> Royal Gazette. 20 February 1839.

3<sup>rd</sup> Battalion, Carleton County Militia at Madawaska was excluded from the draft, most likely due to concerns about their loyalties given the disquieting effect that the Maine agents had had in the area.<sup>162</sup> In a letter to Lord Glenelg, the Secretary of State for the Colonies, Harvey stated that he had authorized the embodiment of 850 militiamen and that Lieutenant-Colonel Maxwell, who was commanding the forces in Carleton County, had authority to call out an additional 300.<sup>163</sup> Of the potential 1,150 to be embodied, it appears that only about 950 were actually called out. This only represented five per cent of the strength of the New Brunswick Militia, which for 1837 was about 21, 796. Harvey also had 1, 398 British Regulars at his disposal.<sup>164</sup>

Each side made troop dispositions that were intended to check the others' movements. Much like a game of chess, the object was to avoid collision and yet prevent the other side from gaining an advantage. By the 15<sup>th</sup> of February, Harvey had started to deploy his forces. Four companies of the 36<sup>th</sup> Regiment, which was the garrison infantry regiment, were ordered north from Fredericton. Two companies were stationed at Woodstock to guard against the Americans at Houlton. One company was sent to Tobique and the Mouth of the Aroostook to counter the posse at Fort Fairfield and to guard the boom across the Aroostook River. The fourth company went to Grand Falls where they could guard the Madawaska

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<sup>162</sup> PANB. RS 344. Harvey to Glenelg dated 15 March 1839.

<sup>163</sup> *Ibid.* Harvey to Glenelg dated 18 February 1839.

<sup>164</sup> PANB. RS 536. Bluebook for 1838. NSARM. WO 17/2386 (1839)

Settlement and the route to Quebec.<sup>165</sup> Harvey's strategy was "confined to the protection of the communication between this province and Lower Canada through the valley of the St. John and of Her Majesty's subjects of the Madawaska Settlement".<sup>166</sup> However, he did not have sufficient troops to do this and so he sent for help. Sir John Colborne agreed and sent the 11<sup>th</sup> Regiment and a detachment of artillery to garrison the Madawaska settlement and the portage route to the St. Lawrence. Once in location, Colborne believed that the "the companies of the 11<sup>th</sup> ... [were] ... well placed to ensure our Communication and to give confidence to the Acadians". They would also be able to fend off any incursions by Maine. Sir Colin Campbell sent the 69<sup>th</sup> Regiment that had just arrived in Halifax from the West Indies to New Brunswick.<sup>167</sup>

Meanwhile, Hodsdon's force had started to arrive in Houlton on 5 March with 1,069 men. As Hodsdon advanced toward Fort Fairfield, he left garrisons in Bridgewater and Presque Isle. His force arrived in Fort Fairfield during the period of 13-15 March. Once the militia had arrived, the land agent began releasing his posse until there were only about 60 left by 16 March. While Hodsdon moved up the route closest to the border, Batchelder's force was moving up the interior route to Marsardis, which he reached on 12 March with about 500 men. Foster had mustered his force of 369 men in Calais between 3 and 6 March. While waiting for the militia to arrive and relieve them, the posse had been active in pursuing

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<sup>165</sup> NSARM. WO 17/2386 (1839) and IUP. BPP/USACR. 389. Fairfield to Van Buren 19 February 1839.

<sup>166</sup> BPP/USA/CR. 428. Harvey to Fox dated 6 March 1839.

<sup>167</sup> NSARM. WO 17/2386 (1830) and WO 17/1543 (1839). LAC. MG9A2. Vol. 6, Pt. 3, File 1. Colborne to Harvey dated march 18, 1839.

trespassers along the Aroostook and Fish Rivers and along River du Chute. This appears to have been a fairly peaceful process.<sup>168</sup>

At the height of the crisis, in mid-March 1839, the troops were deployed as follows:

St. Andre. Headquarters and one company of the 11<sup>th</sup> Regiment. The other two companies of the Regiment were still in Chambly;

Madawaska. three companies of the 11<sup>th</sup> Regiment, a detachment of the Royal Artillery (RA) (a six-pounder gun and rockets), and the Carleton Light Dragoons (couriers). The 3<sup>rd</sup> Battalion, Carleton Militia was not embodied. Two companies of the 11<sup>th</sup> and one gun were located on the right, or south, bank of the St. John to reinforce Britain's claim of jurisdiction over all of the Madawaska Settlement. Lieutenant-Colonel Goldie of the 11<sup>th</sup> commanded this force;

Grand Falls. one company of the 36<sup>th</sup> Regiment, a detachment of RA with a gun and a company of the 2<sup>nd</sup> Battalion, Carleton Militia;

Tobique and Mouth of the Aroostook. one company of the 36<sup>th</sup> Regiment, a detachment of RA with a six-pounder gun and one company of the 2<sup>nd</sup> Battalion, Carleton Militia. There was an advanced post at the Falls of the Aroostook;

Fort Fairfield. Nine companies from the 3<sup>rd</sup> Division, Maine militia under Major-General Hodsdon and approximately 60 members of the posse under Colonel Jarvis;

Presque Isle. two companies from the 3<sup>rd</sup> Division, Maine militia and three companies from the 2<sup>nd</sup> Division;

Masardis. approximately 300 Maine militia from the 2<sup>nd</sup> Division under Brigadier-General Batchelder;

Florenceville (Buttermilk Creek). one company of the 1<sup>st</sup> Battalion, Carleton Militia;

Bridgewater. two companies of the 3<sup>rd</sup> Division, Maine militia;

Woodstock. one company of the 36<sup>th</sup> Regiment and four companies of the 69<sup>th</sup> Regiment, a detachment of RA with two twelve-pounder howitzers and a six pounder gun, a detachment of New Brunswick Militia Artillery (NBMA), three companies of the 1<sup>st</sup> Battalion, Carleton Militia under Lieutenant-Colonel Allen, and

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<sup>168</sup> Scott. Ties of Common Blood. p 226. Cites the Report of the Land Agent for 1839.



the York Light Dragoons (couriers). There was an advanced post of seven men of the 69<sup>th</sup> Regiment at Richmond on the Houlton Road. Lieutenant-Colonel Maxwell of the 36<sup>th</sup> Regiment commanded all the forces in and above Woodstock;

Houlton. three companies (120 men) of the 1<sup>st</sup> Regiment of U.S. Artillery and two companies of locally raised Maine militia. The United States Army regulars were not involved in the crisis;

Fredericton. two companies of the 36<sup>th</sup> Regiment, a detachment of RA, rear parties of the 11<sup>th</sup>, 65<sup>th</sup> and 93<sup>rd</sup> Regiments, a Royal Engineer, a detachment of the NBMA and approximately three companies of the York Militia under Lieutenant-Colonel Robinson;

Saint John. one company each of the 36<sup>th</sup> and 69<sup>th</sup> Regiments, a detachment of RA, rear parties of the 11<sup>th</sup>, 65<sup>th</sup> and 93<sup>rd</sup> Regiments, a Royal engineer, a detachment of the NBMA and approximately three companies of the Saint John city Militia under Lieutenant-Colonel Peters;

St. Stephen. one company of the 4<sup>th</sup> Battalion, Charlotte County Militia;

Calais. five companies of the 7<sup>th</sup> Division, Maine militia under Major-General Foster;

St. Andrews. a detachment of RA, a detachment of NBMA and one company of the 1st Battalion, Charlotte Country Militia; and

Southern Maine. drafts from the 5<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> Divisions of Maine militia were mustering at Portland, Augusta and Skowhegan.<sup>169</sup>

A simple comparison of the relative strengths is:

**Table 1 Comparison of Troop Strengths during the Aroostook War.**

TYPE	TOTAL		ON THE FRONTIER	
	BRITISH	AMERICAN	BRITISH	AMERICAN
REGULAR	1398	120	956	120
MILITIA	950	2904	433	1618
POSSE		750		60
TOTAL	2348	3774	1389	1798

<sup>169</sup> The information for the section comes from a variety of sources. For the Americans, these sources are the Report of the Adjutant General and the Report of the Maine Land Agent for 1839 as cited in Scott. Ties of Common Blood and the Aroostook War. Historical Sketch and Roster of Commissioned Officers and Enlisted Men Called into Service for the Protection of the Northeastern Frontier of Maine From February to May, 1839. For the British, the sources are NSARM WO17 for Canada and Nova Scotia Commands, the Royal Gazette and PANB RG 1 RS 344 Harvey to Glenelg 13 March 1839 and pay warrants in RS8 Militia and Regular Army – Accounting Correspondence.

Note: The American army did not actively participate in the Aroostook War.

Once the Maine militia reached Fort Fairfield, the posse was rapidly reduced in strength to about 60. Once this occurred, the comparative strengths would be British – 1389 and American – 1798. Given the greater number of British Regulars, the balance of combat effectiveness would have been at least equal if not tilted in favour of the British. Fortunately, collision did not occur, there was no actual fighting and war did not erupt. The only skirmishes were between the posse and the trespassers. On 11 March, a group of lumbermen tried to prevent a detachment of the posse from arresting six lumbermen on River du Chute and taking them as prisoners to Fort Fairfield. The situation was defused when the prisoners agreed to accompany the posse in hope of being allowed by the Land Agent to keep their timber and teams.<sup>170</sup> Generally speaking, the two sides kept well apart, however an anecdotal story is told of the American and British sentries at a post along the Presqu’Ile of the St. John being on opposite sides of the same hill.<sup>171</sup> The only casualty is said to have been a farmer in Fort Fairfield who was struck by a ricochet during victory celebrations.<sup>172</sup> One source claims that three British soldiers died from the effects of the poor support they received. The Monthly Returns do show that two privates of the 36<sup>th</sup> Regiment and one private of the 69<sup>th</sup> Regiment died but do not provide the reasons.<sup>173</sup> Given that Harvey praised the Commissariat for the

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<sup>170</sup> Scott. Ties of Common Blood. pp. 233-235. Cites letters from Thomas Bartlett to Colonel Jarvis dated April 9, 1839 and to Rufus McIntire undated. (John Fairfield Papers Collection, 145B 4/7, Maine Historical Society).

<sup>171</sup> Ibid. p. 209. Cites the Report of the Adjutant General for 1839.

<sup>172</sup> McNutt. New Brunswick. p. 269.

<sup>173</sup> NSARM. WO 17/2386 (1839)

support that they had provided during both the troop movements to Canada and during the Aroostook War, the suggestion of inadequate support does not appear to be credible.<sup>174</sup> Otherwise, the sobriquet of the “bloodless Aroostook War” appears apt.

While the preparations for war were continuing, a diplomatic solution was being worked out in Washington. On 27 February, John Forsyth, the American Secretary of State and H.S. Fox, the British Envoy Extraordinary and Minister Plenipotentiary signed a proposal to end the crisis. The agreement called for Fairfield to withdraw the Maine militia from the disputed territory. In turn, Harvey would agree not to expel the Maine militia by force and to agree to the presence of the posse in the Aroostook Valley. Any future and armed operations against illegal timber cutters would be coordinated between Maine and New Brunswick. The implied understanding was that Harvey would continue to administer the rest of the disputed territory pending a final settlement on the boundary issue being reached between Great Britain and the United States.<sup>175</sup> However, this was not part of the original Forsyth/Fox agreement nor was the question of the future exercise of jurisdiction in the Aroostook Valley addressed. While both National governments endorsed this plan, Maine did not. President Van Buren recalled his skilled negotiator, General Winfield Scott, from the Canadian frontier and gave him the task

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<sup>174</sup> PANB. RS 344 Harvey to W.H. Robinson, Assistant Commissary General – in - Charge, dated 5 April 1839.

<sup>175</sup> Scott. Memoirs. pp. 338-341.

of convincing Maine to accept the proposal.<sup>176</sup> Scott's proposal was based on the Forsyth/Fox one and added some of the missing details.

Fortunately, Scott and Harvey had known and trusted each other since the War of 1812/14. Having received instructions from H.M. Government, Harvey quickly agreed to the proposal. Scott, for his part, was able to convince the Maine politicians to agree.<sup>177</sup> A key part of Maine's side of the agreement was that they would not "disturb by arms the said Province [of New Brunswick] in the possession of the Madawaska settlements, or...attempt to interrupt the usual communications between the Province and Her majesty's Upper Provinces".<sup>178</sup> The British agreed to allow Maine to retain its posse in the Aroostook Valley to prevent trespass. An exchange of notes between Scott, Harvey and Fairfield on 21, 23 and 25 March sealed the agreement.<sup>179</sup> Orders were issued on 25 March to start the discharge of the Maine militia and for the New Brunswick militia on 27 March. The discharges would be phased over a period of time and a group of Maine militia was to remain in the disputed territory until the Maine Land Agent organized a suitable civil force to replace it.<sup>180</sup> The British garrisons remained in Woodstock and the Mouth of the Aroostook until June. The one in Grand Falls was not withdrawn and continued to guard the Upper St. John River.<sup>181</sup> Harvey also assured Scott that he would take measures to protect the timber in the areas still under British jurisdiction and gave

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<sup>176</sup> *Ibid.* p. 332.

<sup>177</sup> *Ibid.* 345.

<sup>178</sup> *Ibid.* p. 349.

<sup>179</sup> Scott, *Memoirs*, pp. 347-351. *BPP/USA/CR*, pp. 431-434. Scott to Harvey dated March 21, 1839.

<sup>180</sup> *Aroostook War*, pp. 17-19. Royal Gazette 3 April 1839.

<sup>181</sup> NSARM. WO 17/2386 (1839).

such orders to MacLauchlan.<sup>182</sup> The final resolution of the border controversy would be worked out in due course.

### **The Garrison Period – 1839 to 1847.**

The 11<sup>th</sup> Regiment departed the Madawaska settlement about the end of March 1839.<sup>183</sup> At about the same time, Jarvis sent Captain Nye, with about 23 members of the posse, to the Fish River to stop timber depredations there. Jarvis' instructions to Nye were quite clear. He was to prevent the passage of timber down the Fish River and to use his discretion should the British challenge his presence. In such circumstances, h was to maintain his position if possible, otherwise he should withdraw. In no case was he to cross to the north side of the St. John River as this was within New Brunswick's jurisdiction. Maine was prepared to draw the internal boundary of the disputed territory along the St. John River and occupy the right, or south, bank of it.<sup>184</sup> While this was happening, Jarvis was completing the boom across the Aroostook River and, on 9 April, began the construction of two blockhouses at Fort Fairfield.<sup>185</sup> Nye arrived at Soldiers' Pond, about four miles upstream from the mouth of the Fish River, in early April and began to construct a boom and a blockhouse. By 23 April, he had moved to the mouth of the Fish River (Fort Kent) and began a second blockhouse and boom.<sup>186</sup> This placed the posse in a firm position on the right bank of the St. John River, about 20 miles upstream from

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<sup>182</sup> BPP/USA/CR. 433. Harvey to Scott dated 23 March 1839 and PANB. RG1 RS 344 Harvey to MacLauchlan dated 6 April 1839.

<sup>183</sup> PANB.RS 344 Harvey to Goldie dated 27 March 1839.

<sup>184</sup> Scott, *Ties of Common Blood*, p. 253-253. Cites a letter from Jarvis to Nye dated March 27, 1839.

<sup>185</sup> *Ibid.* p. 254. Cites a letter from Jarvis to Fairfield dated 9 April 1839

<sup>186</sup> Scott, *Ties of Common Blood*, pp. 254-256. Cites the Report of the Land Agent for 1839; Classen. *Thrust and Counterthrust*, p. He saw this two-phased move as the posse testing the British response. When the British did not react, they pushed on to the mouth of the Fish River.

the Madawaska River and at the western limits of the established Madawaska settlement. This activity, in clear violation of the agreement between Scott and Harvey, set off a round of diplomatic protests. In response to Harvey's protest, Scott agreed that Nye's actions were contrary to the agreement. Thomas Baillie, the New Brunswick Commissioner of Crown Land, met with the Maine Land Agent, Rufus MacIntire who agreed that Nye had acted without authority. However, no one on the American side was prepared to take any action. Jarvis revealed Maine's real intentions in a letter to Fairfield dated some eight months later, in which he said "Our true policy is to proceed silently and quietly, strengthening ourselves on the Territory, and while the two countries were negotiating we should decide the question".<sup>187</sup> So, despite the agreement, Maine had extended its jurisdiction into the Madawaska settlement.<sup>188</sup> The action threatened both the communications route and the British inhabitants of the Madawaska settlement.

As the Aroostook War crisis was winding down, the British authorities were making contingency plans. In mid-March, Sir John Colborne indicated in a letter to Harvey that he believed the boundary question would again be submitted to arbitration. In the interim, he also believed that it was our "duty to do everything in our power to diminish the chances of hostilities by our forbearance but [at the same time] to make active preparations for war. The Commissariat Department has sent supplies to Rivière du Loup for the Madawaska Settlement Detachment for three

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<sup>187</sup> Scott, Ties of Common Blood, pp. 260 and 263. Cites the minutes of the Baillie/McIntire meeting of 6 June 1839 and a letter from Jarvis to Fairfield dated January 7, 1840. (John Fairfield Papers Collection, 145, Maine Historical Society).

<sup>188</sup> BPP/USA/CR, pp. 444-445. Harvey to MacLauchlan dated 30 April 1839.

months. I have ordered boats to be built on the Lake Temiscouata and shall endeavour to improve the road from the valley of the St. Lawrence to the Lake and to assist you in completing the route to Madawaska.”<sup>189</sup> Harvey agreed “we must exert ourselves in the improvement of our communication between the Madawaska and the St. Lawrence” and by late March had ordered MacLauchlan to work on this. By 25 July 1839, Harvey could report to the Marquis of Normanby that he and Colborne were in the process of improving the route and establishing a series of posts along it to facilitate the movement of troops.<sup>190</sup> This marked the start of the consolidation or garrison period. The plan included improving the outpost at Dégelis and at Cabano (Fort Ingall). Colborne established a small garrison of 13 soldiers at Fort Ingall in June 1839.<sup>191</sup> There were also plans to build a permanent post at Woodstock “to protect the line of communications between that Province [NB] and Canada” but this was not done.<sup>192</sup> The finishing touch would be building a blockhouse at the mouth of the Madawaska River in the fall of 1841.<sup>193</sup> These activities set off a round of protests by the Americans who claimed that the British were violating the terms of the agreement. This time it was the British who demurred. Tension was increasing due to these and other confrontations.

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<sup>189</sup> LAC. MG9A2. Vol. 6, Pt. 3, File 1. Colborne to Harvey dated 18 March 1839.

<sup>190</sup> PANB. RS 344. Harvey to Goldie dated 25 March 1839 and Harvey to Normanby dated 25 July 1839.

<sup>191</sup> NSARM. WO 17/1543 (1839).

<sup>192</sup> UNB. Loyalist Collection. NBLG. Despatches Received – 1841 – Vol. XXII. Russell to Harvey dated February 1, 1841.

<sup>193</sup> Young, Richard T. Canadian Historic Sites – Occasional Papers in Archaeology and History, No. 23 – Blockhouses in Canada, 1749-1841. Parks Canada, 1980. 327. Cites a written estimate submitted on 4 October 1841. (PAC MG12, WO 44, Vol. 43).

As fall approached, the New Brunswick lumbermen's resistance made its last attempt against the posse. Captain Parrott, commander of the posse at Fort Fairfield, was preventing anyone suspicious from ascending the Aroostook River. This meant that the lumbermen could not move into their winter camps in preparation for timber cutting operations.<sup>194</sup> A group of lumbermen gathered at Tibbetts' store in Tobique on the night of 8 September 1839. They took the militia arms that were stored there and made an abortive raid on Fort Fairfield. The sentry at Fort Fairfield spotted them approaching, fired a warning shot and they fled back to Tobique.<sup>195</sup> This raid was an embarrassment to the Provincial authorities as it was not in keeping with the behaviour expected of British subjects. The organizers had also gulled a well-known militia officer, Captain William McKenzie, into leading the group. Warden MacLauchlan investigated the incident and concluded that it had been organized in Woodstock.<sup>196</sup> Presumably, the same men, who had engineered McIntire's capture, were behind this raid. However, McKenzie was the only one who was punished. Harvey first reprimanded and then cashiered him. A year later, in response to popular support for McKenzie, Harvey reinstated him, as the Americans had not punished their people who had led raids into the Canadas.<sup>197</sup> This increased tension

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<sup>194</sup> Scott, Ties of Common Blood, pp. 247-248. Cites a letter from Parrott to Fairfield dated o/a 9 September 1839.

<sup>195</sup> McEwen, Alec, ed. In Search of the Highlands, Mapping the Canada-Maine Boundary, 1839. Fredericton: Acadiensis Press, 1988. [The Featherstonhaugh and Mudge Journals] p. 33. See Featherstonhaugh's Journal for 10 September 1839.

<sup>196</sup> UNB. Loyalist Collection. LGNB. Despatches Received 1839. Reports and Letters from Lt. Colonel MacLauchlan, Warden of the Disputed Territory for 1839. MacLauchlan to Harvey dated September 11, 1839.

<sup>197</sup> UNB. Loyalist Collection. LGNB Despatches Sent Vol. VII - 1839. FC LPR .N4L5D4. Harvey to Lord Russell, Secretary of State dated 7 and 17 October 1839; Despatches Received. Vol. XXI - 1840. 22 Oct 40. Russell to Harvey dated 22 October 1840.



led to the post at Temiscouata (Fort Ingall) being reinforced by one company of infantry from the 11<sup>th</sup> Regiment in November 1839 with a second company being sent there in December.<sup>198</sup> It was clear that each side had started to mark out their territory in anticipation of any border discussions.

The next crisis came in the fall of 1840 when Maine held two town meetings at Fort Kent. Captain Rines, who was in charge of the posse, threatened Francis Rice, a British magistrate, who tried to protest this exercise of American jurisdiction within the British part of the disputed territory.<sup>199</sup> This action pushed the British authorities too far and Harvey asked Lord Sydenham, the Governor-General of Canada, to send troops into the Madawaska Settlement to give “support to the civil authorities of the Queen and protection to Her Majesty’s subjects in the Madawaska Settlement”.<sup>200</sup> Sydenham agreed and informed Harvey that he had received instructions from Her Majesty’s Government not to allow the Americans to occupy any of the north bank of the St. John River and to maintain the security of the communications route.<sup>201</sup> Two companies of the 56<sup>th</sup> Regiment were sent to Madawaska in December 1840. This was in addition to the company of the 56<sup>th</sup> at

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<sup>198</sup> NSARM. WO 17/1543 (1839).

<sup>199</sup> British Parliamentary Papers. North American Boundary: Correspondence Relating to the Boundary Between the British Possessions in North America and the United States of America Under the Treaty of 1783. Shannon, Ireland: Irish University Press, 1969. (BPP/NAB) p. 46. MacLauchlan to Harvey dated 9 November 1840.

<sup>200</sup> Ibid. pp. 43-44. Harvey to Sydenham dated 13 November 1840 and Sydenham to Fox 23 dated November 1840.

<sup>201</sup> Bourne, Kenneth and D. Cameron Watt, General Editors. British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print. Part I. From the Nineteenth Century to the First World War. Series C. North America, 1837-1914. Volume 1, McLeod and Maine, 1837-1842. Bethesda, MD: University Publications of America, 1986. (BDFA, Pt. 1, Series C, Vol. 1) pp. 104-105. Sydenham to Harvey dated November 23, 1840.

Fort Ingall and a small detachment had been placed at Dégelis in June 1840.

Fairfield, of course, protested this to Harvey and Van Buren without success.<sup>202</sup>

The final step in the garrison period was the occupation of Fort Fairfield and Fort Kent by one company each from the First Artillery Regiment of the United States Army in September 1841. Maine was pushing for this as the Land Agent was finding the maintenance of the posse to be expensive and wanted to pass the expense to the United States Government.<sup>203</sup> The British had first protested this, as it would give permanence to the American occupation of the territory. However, incidents such as the desertion of seven soldiers of the 56<sup>th</sup> Regiment at Madawaska in April 1841 caused them to rethink their position. John Baker and three others were arrested and convicted for aiding the desertion and Captain Rines, the commander of the posse, was implicated as well.<sup>204</sup> Pending a border settlement, Colebrooke recommended that having regular troops, British and American, garrisoning the disputed territory would provide a “guarantee for the strict observance” of the existing agreements, which did not exist while the posse was forming the garrisons.<sup>205</sup> The American troops were sent to Fort Fairfield and the newly renamed Fort Kent in early September of 1841. At the time, the American government was in disarray as many members of President Tyler’s cabinet had resigned over a bank bill he had vetoed. Perhaps the American Secretary of War or

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<sup>202</sup> British Parliamentary Papers. Colonies: Canadian Boundary, Vol.2. Shannon, Ireland: Irish University Press, 1969. (BPP/CCB) pp. 49-50. Fairfield to Harvey dated December 15, 1840 and Forsyth to Fax dated December 26, 1840. Forsyth stated that Fairfield sent a copy of the letter to Van Buren and asked Fox to lobby Sydenham to remove the troops.

<sup>203</sup> Scott. Ties of Common Blood. p. 274, cites Report of Land Agent for 1841.

<sup>204</sup> BPP/NAB. pp. 145-146. Colebrooke to Sydenham undated and 11 May 1841.

<sup>205</sup> Ibid. p. 148. Colebrooke to Sydenham 11 May 1841.

General Winfield Scott, as Fox was not certain who issued the order, was thinking along the same lines as Colebrook when one of them took advantage of this turmoil to order the troop movements and remove the posse from the frontier.<sup>206</sup> Because this happened before a formal agreement had been made with the British, Sydenham took the opportunity to order part of the garrison at Madawaska to move to the south bank of the St. John River “with a view to more effectually to protect Her Majesty’s subjects, and to mark, most distinctly, our determination to maintain our jurisdiction there”.<sup>207</sup>

The British authorities were not pleased with Harvey’s handling of the American presence on the Fish River. At first, in May 1839, Harvey was prepared to send a company of the 69<sup>th</sup> Regiment to the Madawaska settlement to assert British jurisdiction and to prevent interference with the settlers or a possible interruption of the mail courier.<sup>208</sup> His preparations had advanced to the stage where he had tentatively arranged for accommodations in the settlement and MacLauchlan had located boats to move them up river from Grand Falls.<sup>209</sup> However, Harvey took no direct action other than to protest to Fairfield and Scott. This allowed the posse to establish itself at Fort Jarvis (later Fort Kent). Then, after Colborne sent

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<sup>206</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, p. 220. Sydenham to Fox dated September 1, 1841; Lodge, Henry Cabot. Daniel Webster. Boston and New York: Houghton, Mifflin and Company, 1883 and 1911. pp. 120-121.

<sup>207</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, p. 225. Sydenham to Fox dated September 14, 1841.

<sup>208</sup> PANB. RS 344. Harvey to Normanby dated 26 May 1839.

<sup>209</sup> UNB. Loyalist Collection. LGNB. Dispatches Received. MacLauchlan Reports, 1839. MacLauchlan to Captain Tryon dated 2 June 1839 and 24 August 1839. MacLauchlan had obtained two boats to move the troops and arranged to rent Simon Hebert’s house on the right bank of the Madawaska settlement. This is where a detachment of the 11<sup>th</sup> Regiment had been stationed earlier in the year.

reinforcements to Temiscouata in December, Harvey sent an apologetic letter to Fairfield in which he said that the movement of troops had “been made by authority superior to mine”.<sup>210</sup> In the fall of 1840, when tensions were heightened by the town meetings, Harvey sent a letter to Lord Sydenham on 13 November asking him to send troops to garrison the Madawaska settlement. The next day, Harvey sent another letter in which he proposed building blockhouses opposite the American one at Fish River and at Madawaska. He thought that an armed posse or police force could garrison them. As this was similar to what the Americans were doing, they would have no grounds for complaint. Three days later, Harvey asked that this deployment be stopped and that it might be better to form a civilian force, similar to the Maine posse, to protect the Madawaska settlement. Sydenham’s reply was that the troops were being sent with orders not to permit Maine to move onto the north bank of the St. John River and “to maintain in perfect security the communication by the Madawaska between Fredericton and Quebec”.<sup>211</sup> Harvey did not confine himself to writing to the Governor General about the troop movements as he also wrote an apologetic letter to Governor Fairfield in which he explained the rationale for the deployment.<sup>212</sup> This angered Sydenham who rebuked Harvey. Sydenham also reminded Harvey of Lord John Russell’s dispatch of 19 February 1840 that directed Harvey not to take an active role in the boundary discussion. In addition,

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<sup>210</sup> BPP/USA/CR, 458. Harvey to Fairfield dated 19 December 1839.

<sup>211</sup> BPP/NAB, pp. 44, 45 and 48. Harvey to Sydenham dated 13 and 17 November 1840 and Sydenham to Harvey dated 23 November 1840; Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, pp. 104. Harvey to Sydenham dated 14 November 1840.

<sup>212</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, pp. 105-106. Fairfield to Harvey dated December 15, 1840. Fairfield referred to Harvey’s letter of 10 December in which he explained why the troops had been deployed and, apparently, indicated that he would ask Sydenham to remove them.

Harvey was maintaining a correspondence with Fox in Washington and not sending copies of his letters to Sydenham as previously requested.<sup>213</sup> Harvey was further discredited when his legal advisors opined that he did not have the authority to form a posse.<sup>214</sup> This vacillation and failure to dislodge the Americans, plus the admissions to Fairfield of divisions within the British position, led to Harvey's dismissal in 1841.<sup>215</sup> In writing to his successor, Sir William Colebrooke, Sydenham said "the Americans ought never to have been permitted by Sir John Harvey to form that establishment [at Fish River] which was in direct and open violation of the Convention made by himself".<sup>216</sup>

While the stakes were high in the struggle to control the disputed territory, namely the possibility of sparking the third Anglo-American war, other aspects of the Aroostook War and the ensuing garrison period were surprisingly low key. The

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<sup>213</sup> LAC. Governor General Internal Letterbook 1839-40. RG7, G17A, Vol. 1. Page 105. Sydenham to Harvey dated 26 December 1840.

<sup>214</sup> LAC. RG 7 G7 Vol 16. LGNB Dispatches to Governor General, 1840. p. 336. Harvey to Sydenham dated December 28, 1840. The legal opinions by G.F. Street, Solicitor General and Charles T. Peters, Attorney General to the effect that Harvey had no authority to create an armed posse form enclosures to this letter; Scott. Ties of Common Blood. pp. 250-251. Harvey to MacLauchlan dated April 13, 1839, Captain Samuel Tryon, Harvey's secretary, to MacLauchlan dated April 28, 1839 (PANB Lieutenant Governor's Letterbook). Harvey also alienated Warden MacLauchlan over this issue. The division started in April 1839 when Harvey chastised MacLauchlan for not giving him timely notice of the appearance of the posse on the Fish River. Harvey refused to accept MacLauchlan's resignation; TNA. CO 412/469. NB Letters 1840. Harvey to MacLauchlan dated December 9, 1840; LAC. MG 9 A2 Vol. 6, Pt 3, File 3, 1839-1857. MacLauchlan to Murdock, Chief Secretary to the Governor General dated December 16, 1840. Then, in early December 1840, Harvey sent MacLauchlan to meet with Sydenham and convince him to accept Harvey's posse proposal. As it turned out, MacLauchlan was really against the idea and informed Sydenham accordingly. MacLauchlan also agreed to act as Sydenham's "eyes and ears" in the Disputed Territory; MacNutt. New Brunswick. p. 272. He states that MacLauchlan, and not Harvey, advised Sydenham of the presence of American census takers in the Madawaska settlement in August of 1840 and cites this as another example of the split between Harvey and MacLauchlan. Unfortunately, MacNutt did not footnote this statement and the letter has not been found.

<sup>215</sup> Classen. Thrust and Counterthrust. p. 75. UNB. Loyalist Collection. LGNB. Despatches Received – 1841 – Vol. XXII. Russell to Harvey dated January 10, 1841. Russell outlined the reasons for Harvey being removed as Lieutenant Governor of New Brunswick in this letter.

<sup>216</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1. pp. 169-170. Sydenham to Colebrooke dated May 21, 1841.

3<sup>rd</sup> Battalion, Carleton County Militia at Madawaska was not embodied but this did not prevent one of its officers from playing a key role in information gathering. Captain Francis Rice reported the presence of the Maine posse on the Fish River in late February. They had carried off 11 inhabitants of the area who were, presumably, lumbermen who were caught illegally cutting timber and detained for trial.<sup>217</sup> This, and a report by Mr. L. B. Rainsford, a Deputy Surveying Officer and MacLauchlan's assistant, about the Posse at Fish River in June indicates that British officials had relatively free access to the American camps.<sup>218</sup> This access continued as, in November 1839, Lieutenant Bainbrigge of the Royal Engineers made a detailed report, with drawings, of the posse's activities at Fish River.<sup>219</sup> Because of the lack of interior roads, the British could have easily starved out the American positions at Fort Fairfield and Fort Kent. In fact, the British detachment at the Mouth of the Aroostook did stop the delivery of supplies in March 1839.<sup>220</sup> They apparently relented as both posts were reported to be receiving supplies transported up the St. John River in the summer.<sup>221</sup>

The Americans also had easy access to the British posts. During the Aroostook War, Major Kirby at Hancock Barracks was sending news of British troop movements to Governor Fairfield, who forwarded this information to President

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<sup>217</sup> UNB. Loyalist Collection. LGNB. Despatches Received 1839. Colonel Maxwell's Reports. Maxwell to Harvey dated 26 February 1839.

<sup>218</sup> *Ibid.* Reports and Letters from Lt. Colonel MacLauchlan, Warden of the Disputed Territory for 1839. MacLauchlan to Harvey dated 23 June 1839.

<sup>219</sup> *Ibid.* Miscellaneous Letters. Report of Lieutenant Bainbrigge dated 19 November 1839.

<sup>220</sup> *Ibid.* Maxwell's Reports. Maxwell to Harvey dated 4 March 1839.

<sup>221</sup> Letter by John S. Dwyer dated 1 August 1839 published in the Woodstock Times dated 3 August 1839. Dr. David Bell provided a copy of this letter. Dwyer was one of the identified Fort Fairfield raiders in September 1839.

Van Buren.<sup>222</sup> In February 1840, Governor Fairfield protested the presence of British troops at Fort Ingall and Dégelis to President Van Buren. Fairfield based his complaint on several statements by Americans who had traveled the British postal route to Quebec and had visited the posts. One of these Americans was on a mission in August 1839 to purchase supplies for the posse at Fish River. Following his first protest, Fairfield sent Benjamin Wiggin to scout the British posts between the Madawaska settlement and the Grand Portage. At Fort Ingall, Major Chambry of the 11<sup>th</sup> Regiment provided a very detailed account of the military activities there.<sup>223</sup> During the height of the Aroostook War, while tensions between Maine and New Brunswick were at their highest, Lieutenant Colonel Maxwell reported on his meeting with Major Kirby, the Commanding Officer at Hancock Barracks and said that “Peace and good fellowship is the order of the day”. The British assisted the Americans with the return of three deserters.<sup>224</sup> Later, during the Garrison Period, the American garrison at Fort Kent received its mail through the Madawaska settlement. The American officers at Fort Kent and the British officers in the nearby posts socialized on a regular basis.<sup>225</sup> While intelligence gathering proceeded, denial of information to the potential enemy did not appear to be a consideration. Nor,

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<sup>222</sup> BPP/USA/CR, p. 389. Fairfield to Van Buren dated February 19, 1839.

<sup>223</sup> Ibid. pp. 118-122. Forsyth to Fox dated February 26, 1840; Statement by P. Varnum dated February 11, 1840; Statement by Mark Little dated February 13, 1840; Statement by Thomas Bartlett dated February 10, 1840 and Statement by Benjamin Wiggin dated February 27, 1840. According to Hart’s Army List of 1840, this was Captain (Brevet Major) William Chambre of the 11th Foot

<sup>224</sup> UNB. Loyalist Collection. LGNB. Despatches Received 1839. Maxwell’s Reports. Maxwell to Harvey dated 17 February, 27 February and 10 March 1839.

<sup>225</sup> McDonald, Sheila. “The War after the War: Fort Kent Blockhouse, 1839-1842”. Maine Historical Society Quarterly, (Winter-Spring, 1990). P. 161. Cites Captain Lucien Webster, Commanding Officer at Fort Kent, to Major General Jesup dated November 10, 1842 and Webster to Brigadier General Roger Jones dated August 6, 1842. These documents are held by the Maine Historical Society.

with one exception, did the British actively try to withhold supplies to the Maine posse. Meanwhile, good relations were maintained between the American and British regulars. All in all, the situation within the disputed territory was somewhat surrealistic.

The Garrison Period did not last for long. Both the British and American governments had come to the realization that it was time to resolve this border issue. It was also necessary to diffuse the other tensions that had arisen in 1841 because of the McLeod Trial and the Creole Affair.<sup>226</sup> With this in mind, the British and American governments agreed that the American Secretary of State, Daniel Webster and Alexander Baring, Lord Ashburton, would meet in Washington during the spring and summer of 1842 to hammer out a treaty. Their negotiations were wide ranging. In addition to the Maine/New Brunswick/Quebec border issue, they discussed the course of the border as far west as the Rocky Mountains. The resultant treaty also had articles that dealt with the suppression of the slave trade and the extradition of suspected criminals.<sup>227</sup> Both negotiators were given fairly broad mandates.

However, there was vital ground. In the east, Colborne articulated what would become the British position in a letter to the Marquis of Normanby in May

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<sup>226</sup> Corey, Albert B. The Crisis of 1830-1842 in Canadian-American Relations. New York: Russell & Russell, 1941. pp. 130 – 145 and 177. Alexander McLeod was placed on trial in New York State in 1841 for the murder of Amos Durfee during the capture of the *Caroline*, that was being used by the Upper Canada rebels, on 29 December 1839. His trial became a major international crisis that was only resolved by his acquittal. The trial caused great anti-British animosity in the Northern states. On 7 November 1841, slaves on board the American ship *Creole* revolted and forced the ship to go to Nassau in the Bahamas. Upon arrival on British soil, it was declared that the slaves were free men. This outraged the Southern slave-owning states. As a result of these two incidents, both the Northern and the Southern states were decidedly anti-British in 1841.

<sup>227</sup> BPP/CCB. pp. 3-8. Treaty of Washington (Webster-Ashburton Treaty) of 1842.



1839. Writing soon after the end of the Aroostook War, he foresaw that the solution would be a negotiated boundary. In this, there were two critical issues, both dealing with defence and with communications. First, the Americans had to be kept back from the high ground overlooking the St. Lawrence River. Otherwise, they could threaten British use of this vital waterway. Similarly, the British had to protect their access to the Grand Communications Route. While the pine timber in the disputed territory, the “most valuable in North America”, was an important consideration, it was not the overriding factor that defence was.<sup>228</sup> For the Americans, no agreement could be reached without the concurrence of Maine and Massachusetts. After months of negotiations and “backroom” manoeuvring, Webster and Ashburton signed the treaty on 9 August 1842.<sup>229</sup> Great Britain achieved her strategic goals but had to surrender the part of the Madawaska settlement that was situated on the right, or south, bank of the St. John River. Maine and Massachusetts gained the valuable timber and later agricultural lands of present day Aroostook County, Maine.

The garrisons lingered for a little while after the treaty was ratified by Great Britain in 1843. The garrisons in Fort Fairfield and Fort Kent remained until 1843 and 1844 when the troops were withdrawn to Hancock Barracks in Houlton. The post at Houlton was closed in 1845, ostensibly as part of the preparations for the

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<sup>228</sup> LAC. Letterbook of Despatches to the Colonial Office (Governor General in Lower Canada to the Secretary of State for the Colonies), Volume 52. 1838/1839. p. 175. Colborne to Normanby dated May 17, 1839.

<sup>229</sup> The best modern accounts of the treaty negotiations and the “backroom” deals involving secret maps, public relations campaigns and possible bribes can be found in Jones, To the Webster-Ashburton Treaty and Carroll. A good and Wise Measure.

Mexican War of 1848.<sup>230</sup> The British garrisons in Madawaska and Fort Ingall left in September 1843 while the garrisons in Woodstock and Grand Falls remained until December 1847.<sup>231</sup> However, the lasting legacy was the Grand Communications Route. The British strategy to secure this route was validated 20 years later during the American Civil War. On 8 November 1861, the American Navy boarded the British mail steamer Trent in the Bermuda passage and forcibly removed two Confederate Commissioners who were *en route* to Britain and France. This precipitated the "Trent Affair". The diplomatic crisis that ensued brought the two nations to the brink of war. While the crisis was being defused, Britain began a massive reinforcement of British North America. A total of 11, 500 troops were sent to British North America during the period of December 1861 to March 1862. Because of the season, the St. Lawrence was closed to navigation. This meant that 6,818 troops travelled the "Grand Communications Route" through New Brunswick to Quebec.<sup>232</sup>

The importance of the "Grand Communications Route" declined as relations between Great Britain and the United States improved following the American Civil War and the signing of the Treaty of Washington in 1871. This treaty resolved the question of reparations for the losses to U.S. shipping caused by the British-built, Confederate commerce raiders.<sup>233</sup> However, old border tensions were not forgotten

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<sup>230</sup> Scott, Geraldine Tidd. "Fortifications on Maine's Northeast Boundary, 1828-1845". Maine Historical Society Quarterly, 30, Fall, 1990. 138-139.

<sup>231</sup> NSARM. WO 17/2390 (1843) and WO 17/2394 (1847)

<sup>232</sup> Campbell, W.E. "The Trent Affair of 1861". The Army Doctrine & Training Bulletin, Vol. 2, No. 4, Winter 99. 56-65.

<sup>233</sup> Stacey, C.P.. Canada and the British Army 1846 - 1871. Toronto: University of Toronto Press, 1963. pp. 254-255.

and the route of the Inter-Colonial Railway, built in the 1870s following Confederation, followed a coastal route through New Brunswick that was far removed from the American border and any threat of interference.<sup>234</sup>

### **Summary.**

The British strategic priority during the 60 years of negotiations about the Maine/New Brunswick/Quebec border was defence. The Grand Communications Route, that provided the only year-round way to maintain contact between the Governor General of British North America in Quebec and Whitehall in London, was of vital importance to British military planning in North America. C.P Stacey referred to it as part of the “Backbone of Canada” and described it in parallel terms with the St. Lawrence River/Great Lakes route and the Canadian Pacific Railway that linked eastern and western Canada together. Clearly, this was of great strategic military importance. As Stacey said, “at the end of the long dispute the most truly vital British and Canadian interest [the communications route] was safeguarded”.<sup>235</sup> Stacey’s statement is reinforced by this detailed study, which has confirmed his findings.<sup>236</sup>

Since the end of the last ice age, the First Nations and later the French and the British have known about this communications route and they have made extensive use of it. For the British, it proved its worth during the American

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<sup>234</sup> Jay Underwood. Built for War: Canada’s Intercolonial Railway. Pickering, ON: Railfare/DC books, 2005. pp. 102-103. Underwood quoted a despatch from London that endorsed the coastal route as its military value was enhanced by its “remoteness from the American frontier”.

<sup>235</sup> Stacey. “Backbone”. p. 5.

<sup>236</sup> While Stacey’s report was known to the author and had been read by him, it was not revisited until after the chapter was written.

Revolution, the War of 1812, the Rebellions of 1837/1838 and the Trent Affair of 1861 when it was used to move troops to reinforce what is now Quebec and Ontario. It was also used as a courier route for military dispatches and later became an important link in the civil postal system. There was the additional use of the route by travelers and merchants. In a twist of irony, Maine also used the route in order to supply its posse. The route is still in use today as the Trans-Canada Highway follows the same path.

During the British period, the provision of security to the route was of prime importance. It was exposed to attack by the Americans that, if successful, would have adversely affected the defence of British North America. As a result, the British either encouraged or sponsored the development of a line of settlements along the course of the route. This started with the Acadians and Loyalists following the American Revolution and ended with the disbanded regiments after the War of 1812. This line of settlements, with many of the male inhabitants being former soldiers and enrolled members of the county militias, provided a first line of defence for the communications route. This line of defence was anchored by a series of military posts that were established, abandoned and re-established as the possibility of war increased or decreased. Communities formed around these posts as happened at Grand Falls, NB and Cabano, PQ. The militia officers, who were the continuing military presence in the settlements, played important roles in maintaining peace and stability in their communities. This was particularly noticeable in the Madawaska settlement where some were also magistrates and most were leading citizens. It was through their interventions that the several attempts by

the American citizens living there to challenge British jurisdiction were thwarted. The militiamen themselves could be called on to defend their country as occurred in 1831 when they formed the nucleus of the posse in the Madawaska settlement or manned various posts during the Aroostook War in 1839. There was also a symbiotic relationship between the communities along the route and the military. The need to provide security for the Grand Communications Route led to the establishment of the chain of settlement along the course of the route. In turn, the settlers provided food, shelter and assistance to the troops that moved over the route.

Militarily, and politically, perhaps the most critical period during the long border controversy was in the final years, from 1839 to 1842. British troops, both regulars and militia, deployed along the course of the Grand Communications Route where they prepared to fend off any incursions by the Maine posse and militia. When this crisis ended, leaving Maine in control of the valleys of the Aroostook and Fish Rivers, the disputed territory was effectively partitioned along the line of the Upper St. John River. Military posts were formed on each side of the line of partition to reinforce the claims of each country, thus beginning the Garrison Period. When Daniel Webster and Lord Ashburton met in Washington to begin the boundary negotiations in 1842, this line of partition greatly limited their scope for manoeuvre. The old adage “possession is nine-tenths of the law” could not have been more true. Although the British had to surrender their claim to the southern half of the disputed territory, and could not retain the portion of the Madawaska settlement that lay on the right bank of the St. John River, they did manage to retain

control of the Grand Communications Route. This was Britain's strategic goal and in this she was successful.

While the history of the Maine/New Brunswick/Quebec border controversy cannot be written in terms of military history alone, it is evident that the importance of the military history of this period has been under emphasized. From this research, it can be seen that control of the "Grand Communications Route" was a primary consideration for the British throughout this period. Many of the events that took place within and near the disputed territory take on a new significance once they are considered within this context. The Aroostook War, which is so often looked on as having little significance, takes on a new and enhanced importance as it led to the partitioning of the disputed territory and, to a large degree, shaped the course of the Webster-Ashburton negotiations. The establishment of the series of military posts, that enforced the partitioning of the disputed territory, ushered in the hitherto unrecognized garrison period of New Brunswick history. Similarly, the Lumbermen's Resistance has not been previously identified. As has been previously stated, the defence of the route was the first priority for the British with a concern for welfare of the inhabitants of the Madawaska settlement being a second priority. Certainly timber, and later agriculture, became important towards the close of the controversy but, for the British authorities in Fredericton, Quebec, Halifax and London, this was clearly a third and distant priority. However, the only factor that spanned the 60 years between the Treaty of Paris and the ratification of the Webster-Ashburton Treaty was the defence of the Grand Communications Route. This was

the main strategic issue for the British during the Maine/New Brunswick/Quebec border controversy.

## **Study 2 – The Exercise of Jurisdiction in the Disputed Territory**

To resolve our differences in a “spirit of forbearance and moderation”<sup>1</sup>

### **Introduction and Historiography.**

While the Maine/New Brunswick border controversy dragged on for 60 years from 1783 to 1843, the disputed territory filled with inhabitants. The original Madawaska settlement, which was mainly composed of Acadian and French Canadian inhabitants, was expanding as a result of natural increase and immigration. Settlement along the Aroostook River had begun in the early 1820s and the number of mainly Anglo-American residents was steadily increasing. Many of these were farmers while many more were lumbermen from Maine, New Brunswick and Quebec whose interests were harvesting the valuable pine timber in the area. Their main means of transportation was along the St. John River and its tributaries, which gave them access to both Fredericton and Saint John to the south and to Quebec via the Grand Portage between Lake Temiscouata and the St. Lawrence River to the north. In order to avoid having a lawless frontier, both the American and British governments realized that there had to be some form of jurisdiction exercised within the disputed territory. Initially, it was a question of who was going to do this. The British government, working through the Province of New Brunswick, was the logical choice. The Madawaska settlement, which had been founded in the late 1780s, already had a British administration in place. As Massachusetts, and later

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<sup>1</sup> Van Buren, Martin. Maine Boundary. Washington, D.C.: United States Government, 1838. [Three thousand copies of the documents and papers relating to the Maine Boundary were printed in response to a Resolution of the House of Representatives dated 19 February 1838. The Government documents section of the Harriet Irving Library at UNB holds a copy of this.] p. 276. House Doc. No. 90. Vaughan to Clay dated January 16, 1827.



Maine, initially did not have a presence in the area, it seemed natural for this to continue, on a “stewardship” basis until the location of the border was agreed to. Maine, when it became a state in 1820, challenged this assumption. As a result of a diplomatic incident about timber cutting that occurred in 1825, Great Britain and the United States seemed to have reached an agreement about the exercise of jurisdiction. Essentially, neither party was to take any action that would prejudice the claim of the other party, nor would they undertake any new acts of jurisdiction. The idea was to maintain the disputed territory as it was when the Treaty of Ghent was signed in 1814. This apparent agreement survived several diplomatic incidents in the late 1820s and the 1830s until it was denied by the United States during the Aroostook War crisis of 1839. It became clear that the United States and Great Britain had not understood the old agreement in the same way. The new agreement, which ended the Aroostook War crisis, led to the partitioning of the disputed territory and its subsequent division by the Webster-Ashburton Treaty of 1842.

A clear understanding of the agreement about jurisdiction, and how it was interpreted and implemented by the governments involved, is important to the understanding of the events that took place within the disputed territory. This helps to explain why Maine, New Brunswick and, to a lesser degree, Massachusetts took the actions that they did. These actions were frequently at odds with the way in which the agreement was understood at the national level by both the United States and Great Britain. This mutual understanding, misunderstanding and circumvention of the agreement created friction at the local and national levels that culminated in the Aroostook War crisis, which almost sparked the third Anglo-American war. The

agreement about the exercise of jurisdiction is frequently mentioned in the primary documents but it has received only passing mention in the historiography of the Maine/New Brunswick border controversy. The aim of this study is to add to the historiography of the Maine/New Brunswick border controversy by providing a better understanding of the Anglo-American agreement about the exercise of jurisdiction and the effect that it had on the controversy.

There is a rich historiography about the Maine/New Brunswick border controversy. Perhaps the first paper to discuss this issue was read to the Maine Historical Society in 1879 by Israel Washburn, Jr. He set the standard for much of the later literature as he presented a picture of Maine fighting for her just rights against a hostile British government and an oft-times indifferent American one. In his lengthy, 105-page paper, Washburn made no specific mention of any agreement about jurisdiction.<sup>2</sup> John Francis Sprague next addressed the topic in 1910 when he wrote The North Eastern Boundary Controversy and the Aroostook War. In a 68-page narrative, he essentially covered the same material as Washburn. However, he did briefly touch on the question of jurisdiction, mostly in relation to the declaration of independence by John Baker and associates in 1827 and the British statement of position to the King of the Netherlands in advance of his arbitration in 1831. Again,

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<sup>2</sup> Washburn, Israel, Jr. "The North Eastern Boundary". Read before the Maine Historical Society at Portland, May 15, 1879. Maine Historical Collection. 2<sup>nd</sup> Series, Vol. 1. CIHM/ICMH microfiche series; no. 34353.

there was no discussion of the details and evolution of the agreement concerning the exercise of jurisdiction.<sup>3</sup>

The centennial of Maine statehood in 1920 brought on a number of books about the history of Maine. Henry S. Burrage, the State Historian, tackled the border controversy head-on in Maine in the Northeastern Boundary Controversy. Published in 1919, this long, 395-page book went into great depth. Burrage mentioned the agreement on several occasions, such as its inception in 1825 and the first disagreement about its meaning in relation to John Baker's trial in 1828. It is again mentioned in relation to the Maine sponsored elections in the Madawaska settlement in 1831. Deane and Kavanagh's census of the same year was cast as an attempt by Maine to discredit the validity of Britain's exercise of jurisdiction within the disputed territory. When discussing the events of 1837, Burrage related how Maine was taking advantage of both sides of the discussion. Maine invoked the agreement when it wanted to stop the proposed railroad that would run through the disputed territory to link New Brunswick and Canada, but denied the agreement when it sent Ebenezer Greeley to conduct a census of the Madawaska settlement. In keeping with the narrative style of the period, he did not discuss the actual agreement in any depth. However, Burrage did provide a good summary of how the American government came to the decision to deny the existence of the agreement during the Aroostook War crisis. There is a detailed summary of the violations of the second

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<sup>3</sup> Sprague, John Francis. The North Eastern Boundary Controversy and the Aroostook War. Dover, ME: the Observer Press, c1910. pp. 23 and 31-33. The second half of the book is titled Documentary History of the North Eastern Boundary Controversy and contains reprints of several original documents such as John Baker's trial in 1828 and contemporary newspaper articles relating to the Aroostook War.

agreement, the one made by Scott, Harvey and Fairfield in March 1839, which ended the Aroostook War crisis. Again, he did not discuss these alleged violations in relation to the actual agreement.<sup>4</sup>

Louis Clinton Hatch's Maine: A History was also published in 1919. This large, three-volume work provided a detailed and comprehensive history of Maine from the Norsemen to 1919. While a great deal of information about the separation of Maine from Massachusetts and the early political history of the state was provided, the discussion of the Maine/New Brunswick border controversy was disappointing. John Francis Sprague contributed Chapter X "The North Eastern Boundary Controversy, 1783-1842". The material he presented was essentially a summary of his earlier work. There was no discussion of the agreement about jurisdiction. The only mention of jurisdiction was a criticism of the British magistrates "claiming jurisdictional rights over the disputed territory" and being allowed to do so because "the policy of the national [American] government was a passive one".<sup>5</sup> As the centennial passed, apparently so did the interest in writing about the Maine/New Brunswick border controversy. There was a period of more than four decades before the next books on this subject appeared. In keeping with the nature of the more recent books, the border controversy was addressed as part of a larger story.

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<sup>4</sup> Burrage, Henry S. Maine in the Northeastern Boundary Controversy. Portland, ME: Marks Printing House, 1919. pp. 134, 144-148, 180-183, 187-188, 221-225, 263-266 and 276-289.

<sup>5</sup> Hatch, Louis Clinton. Maine: A History. 3 Vol. New York: The American Historical Society, 1919. p. 271.

W.S. MacNutt included the Maine/New Brunswick border controversy as part of his New Brunswick, A History: 1784-1867, first published in 1963. However, it was discussed as part of the larger history of New Brunswick and so there was no discussion of jurisdiction within the disputed territory.<sup>6</sup> Two years later, H. George Classen included the Maine/New Brunswick border controversy as part of the larger Canadian-United States border issue when he published Thrust and Counterthrust: The Genesis of the Canada-United States Boundary. The Maine/New Brunswick border was discussed primarily in terms of the boundary commissions although he included that standard list of accounts such as John Baker's trial of 1828 and the Aroostook War of 1839. While Classen's narrative was engaging, he only touched on the key events and made no mention of any agreement relating to the exercise of jurisdiction.<sup>7</sup> About two decades later, Howard Jones' To The Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843 was published. Jones focused on the Anglo-American diplomatic relations of the period and on how the Webster-Ashburton Treaty resolved many of the controversial issues. The Maine/New Brunswick border controversy and the Aroostook War were covered in two short chapters. However, he did briefly mention the Anglo-American agreement concerning jurisdiction as it was understood in 1837, but incorrectly stated that it was first challenged in the same year by Maine and Greely's census.<sup>8</sup>

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<sup>6</sup> MacNutt, W.S. New Brunswick, A History: 1784-1867. Reprint. Toronto: Macmillan of Canada, 1984.

<sup>7</sup> Classen, H. George. Thrust and Counterthrust: The Genesis of the Canada-United States Boundary. Don Mills, ON: Longmans Canada Limited, 1965.

<sup>8</sup> Jones, Howard. To The Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843. Chapel Hill, NC: The University of North Carolina Press, 1977. pp. 34-35. The Webster-Ashburton Treaty did not resolve the Oregon question and Jones later discussed how this was

Geraldine Tidd Scott wrote a very detailed account of the Maine/New Brunswick border controversy in her 1992 book Ties of Common Blood: A History of Maine's Northeast Boundary Dispute with Great Britain, 1783-1842. She provided an excellent description of the main events that affected the exercise of jurisdiction. While she occasionally mentioned the agreement in passing, she did not examine the impact of the events on the agreement itself. The main strength of this book is Scott's ability to clearly present the factual details, which other authors passed over, in great depth. She left the interpretation of the significance of the events *vis-à-vis* the exercise of jurisdiction for others.<sup>9</sup> The most recent book that includes this subject is Francis M. Carroll's A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842, which was published in 2001. Like Classen before him, Carroll discussed the Maine/New Brunswick boundary controversy within the context of the much larger issue of creating the United States/Canada border. Carroll's focus was on the boundary commissions and other events were essentially presented in summary form. He did mention Britain's advantage of *de facto* occupation of the Madawaska settlement as preparations were being made for the King of the Netherlands' arbitration and the problems created by overlapping and conflicting jurisdictions in the disputed territory as the Aroostook War was developing. However, the exercise of jurisdiction and its relationship to

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resolved in his next book, Jones, Howard and Donald A. Rakestraw. Prologue to Manifest Destiny: Anglo-American Relations in the 1840s. Wilmington, DE: Scholarly Resources Inc., 1997.

<sup>9</sup> Scott, Geraldine Tidd. Ties of Common Blood: A History of Maine's Northeast Boundary Dispute with Great Britain, 1783-1842. Bowie, MD: Heritage Books, Inc., 1992. p. 72. This is one example where the agreement is mentioned in passing.

the existing agreement was not examined.<sup>10</sup> General histories of the region, such as Maine: The Pine Tree State from Prehistory to the Present<sup>11</sup> and The Land In Between: The Upper St. John Valley, Prehistory to World War I<sup>12</sup>, contained narrative descriptions of the events and a general analysis of them. They did not delve deeply into issues such as questions about the existence of agreements about jurisdiction.

There is no question that there was an Anglo-American agreement concerning jurisdiction dating to 1783, and that the exercise of jurisdiction within the disputed territory was an ongoing source of friction. However, the literature does not provide any detailed discussion about how the agreement came to be made or what its terms were. Nor does it explain why it was understood differently by the two nations, three states and one province that were affected by it and what effect the application of this agreement had on the events that took place within the disputed territory. This examination of the history of the agreement will provide additional insight into the Maine/New Brunswick border controversy and will add to our understanding of it.

### **The Establishment of British Jurisdiction: From the French Regime to 1818.**

For much of the period being studied, the disputed territory was a remote area inhabited by Native peoples. The first European settlement occurred at the

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<sup>10</sup> Carroll, Francis M. A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842. Toronto: University of Toronto Press, 2001. pp. 197 and 208.

<sup>11</sup> Judd, Richard W., Edwin A. Churchill and Joel W. Eastman. Maine: The Pine Tree State from Prehistory to the Present. Orono, ME: University of Maine Press, 1995.

<sup>12</sup> Craig, Beatrice, Maxime Dagenais, Lisa Ornstein and Guy Dubay. The Land In Between: The Upper St. John Valley, Prehistory to World War I. Gardiner, ME: Tilbury House, 2009.

junction of the Madawaska and St. John Rivers. This was initially the site of a First Nations settlement and it later became known as the Madawaska settlement in the late 1780s when Acadians moved there from the lower St. John River. But, for all its remoteness, this area of settlement was not outside the pale: it was subject to jurisdiction. In fact, it was subjected to two sources of jurisdiction as ownership of the region was disputed initially between New France and Acadia and then between the provinces of Quebec and Nova Scotia, later New Brunswick.<sup>13</sup> The origins of this dispute lay in the granting of the seigneuries by Louis XIV of France after the colonies in New France had come under royal control in 1663 and the return of Acadia to France under the terms of the Treaty of Breda of 1667<sup>14</sup>. The two in question were the Seigneury or Fief of Madawaska that was granted in 1683 and the Seigneury of Clignancourt that was granted in 1684. The southern boundary of the former extended nine miles or 15 kilometres down the Madawaska River from Lake Temiscouata while the northern boundary of the latter was at Grand Falls on the St. John River.<sup>15</sup> This created a gap of about 52 miles or 85 kilometres that appears to have been bridged by the British Proclamation of 1763. In it, the boundary between Quebec and Nova Scotia was to be a line that “passes along the High Lands which

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<sup>13</sup> The terms “colony” and “province” seem to have been used interchangeably for much of the early period and, for reasons of consistency, the term “province” will be used. The term “province” was used almost exclusively in the 19<sup>th</sup> century documents.

<sup>14</sup> Eccles, W.J. The Canada Frontier, 1534-1760. Toronto: Holt, Rinehart and Winston, 1969. pp. 61 and 62.

<sup>15</sup> Ward Chipman. Remarks Upon the Disputed Points of Boundary under the Fifth Article of the Treaty of Ghent, Principally Compiled from the Statements Laid by The Government of Great Britain Before The King of the Netherlands, as Arbiter. Second Edition. Saint John, New Brunswick: D.A. Cameron, 1839. pp. 60 and 61, and James Hannay. History of New Brunswick. St. John, NB: John A. Bowes, 1909. p. 23. Chipman provides a chronology of the transfers of the Seigneury of Madawaska from 1683 to 1802. Hannay states that Clignancourt was granted in 1684.



divide the Rivers that empty themselves into the said River St. Lawrence, from those which fall into the Sea; and also along the North Coast of the Baye des Chaleurs”.<sup>16</sup> The line was considered to run through Grand Falls as evidenced by a notice in the 24 January 1765 Quebec Gazette that prohibited inhabitants of Quebec from “interfering with the hunting grounds of the Indians “*down to the Great Falls of the River St. John*””<sup>17</sup>. However, this interpretation was challenged by New Brunswick and the uncertainty about the location of the Quebec/New Brunswick border was not resolved until 1851 when what is essentially the southern line of the Fief of Madawaska was determined to be the boundary<sup>18</sup>.

This uncertainty about the location of the inter-provincial boundary caused friction between Quebec and New Brunswick during the last part of the 18<sup>th</sup> century. The problems started soon after the Acadians moved into the Upper St. John River valley circa 1786 to form what would become known as the Madawaska settlement.<sup>19</sup> Louis Mercure, along with several other Acadians, had been employed by the British army during the latter part of the American Revolution as couriers to carry dispatches between Fort Howe (at Saint John) and Quebec City.<sup>20</sup> Following their dispersal from their homes along the St. John River in 1758/1759, the New

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<sup>16</sup> Text of the Royal Proclamation of 1763 as transcribed on the Indian and Northern Affairs website URL [http://www.ainc-inac.gc.ca/ch/rcap/sg/sga4\\_e.html](http://www.ainc-inac.gc.ca/ch/rcap/sg/sga4_e.html).

<sup>17</sup> Chipman. Remarks. p. 61. Chipman suggests that the southern boundary of Quebec was extended to the Grand Falls by the Proclamation of 1763.

<sup>18</sup> MacNutt. New Brunswick. pp. 313-314.

<sup>19</sup> Craig. The Land In Between. pp. 61 to 70. Craig provided a good overview of the early years of the Madawaska settlement and its first settlers – Acadians from New Brunswick and Canadiens from Quebec.

<sup>20</sup> University of New Brunswick (UNB). Loyalist Collection. Papers and Correspondence of Sir Frederick Haldimand. (MIC-Loyalist FC LMR .H3F7P3) reel 73. Various letters during the 1778-1783 timeframe.

Brunswick Acadians formed new settlements above Fredericton at Aukpacque and at French Village on the Kennebecasis. Some of the Acadians, such as Mercure, held title to their land while others were simply squatters. As plans were being made to settle the Loyalists in the same areas, the Acadians expressed a collective wish to emigrate to the Upper St. John River valley between Grand Falls and the Madawaska River. In his role as courier, Mercure had access to Governor Frederick Haldimand of Quebec. In the fall of 1783, Mercure, acting on behalf of the Acadians at Aukpacque, used this privilege to present a petition to Haldimand for land in the Madawaska area. Haldimand then wrote to Governor Parr of Nova Scotia on 27 November 1783 to obtain his support for this proposal. The uncertainty about the location of the inter-provincial border may have prompted Haldimand's letter although he seemed certain that the new settlement would be in Quebec.<sup>21</sup> Following its creation in 1784, the province of New Brunswick inherited Nova Scotia's claim to the area that would become the Madawaska settlement. This caused the Acadians, who were also starting to relocate there in 1785 or 1786, to also petition New Brunswick for land.<sup>22</sup>

The friction caused by the dual jurisdiction came to a head in the early 1790s when Anselme and Michel Robichaud of Rivière de Caps tried to execute a judgement they had received from the Court of Common Pleas in Quebec against François Albert, a resident of Madawaska. Under the provisions of the Quebec Act of 1774, militia officers were authorized to execute judgements such as this;

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<sup>21</sup> Raymond, William Obder. Winslow Papers, A.D. 1776-1826. Boston: Gregg Press, 1972. p. 149.

<sup>22</sup> Raymond, W. O. "The First Governor of New Brunswick and the Acadians of the River Saint John". Transactions of the Royal Society of Canada, Third Series, 1914, Volume III. pp. 438-439.

however, this was not the case in New Brunswick where British and not French legal customs were followed. Quebec had also established a company of militia, in which François Cir [Cyr] was the captain and Jacques Cir [Cyr] was the lieutenant, at Madawaska in about 1790. Thus, in early May 1792, when Lieutenant Cir attempted to execute the judgement against Albert, he was arrested by Thomas Costin and imprisoned in Fort Carleton at Grand Falls. There was an ironic twist of fate as Cir had to give Albert a promissory note for ten pounds and thirteen shillings in order to be released from custody.<sup>23</sup> In the previous year, Lieutenant Governor Carleton of New Brunswick had appointed Costin as a magistrate in the Madawaska settlement. Based on a letter written on 2 July 1792, Costin was busy championing New Brunswick in the jurisdictional struggle that was taking place with Quebec over control of the Madawaska settlement and its environs.<sup>24</sup> The Jacques Cir affair was just one chapter in this contest.

As this situation was not conducive to peace and good order, Governor General Guy Carleton, Lord Dorchester of Quebec and his brother, Lieutenant Governor Thomas Carleton of New Brunswick, set out to resolve it. If the question of the boundary could be solved, then the other issues, such as overlapping jurisdictions, French vs. British legal systems, and competing militia companies, would resolve themselves. As early as January 1787, Lord Dorchester had considered that “the high ground, which runs by the great rapids [Grand Falls] on the river St. John, is the boundary, and separates Canada from New Brunswick and the

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<sup>23</sup> Chipman. Remarks. pp. 66-68. The English spelling of French names varied greatly. The Cyrs were brothers.

<sup>24</sup> Raymond. Winslow Papers. p. 395. Costin to Winslow dated 2 July 1792.

New England Provinces”.<sup>25</sup> In May of that year, he directed that the Surveyor Generals of both Quebec and New Brunswick should meet at Grand Falls in July to settle the inter-provincial boundary question.<sup>26</sup> Their report did not resolve the question as, by September 1790, Dorchester acknowledged in a letter to Carleton that, while the boundary between Quebec and New Brunswick was uncertain, it was important “that those people do not run into lawless habits to their own [detriment] and [that of] the public domain”.<sup>27</sup> Clearly, the preservation of law and good order was of concern, regardless of which province was responsible for exercising jurisdiction.

Carleton must have taken Dorchester’s letter as his opportunity to strengthen New Brunswick’s control of the Madawaska area. He moved quickly. On 1 October 1790, Carleton signed the land grant for Joseph Mazerolle and 35 other Acadians from the Fredericton area in what would become the Madawaska settlement. In 1789, Oliver Thibodeau and two others from the Kennebecasis River area made another application for land in the Madawaska area and this was also approved.<sup>28</sup> Thomas Costin was appointed as a magistrate in Madawaska in 1791. This was in response to petitions by the settlers at Madawaska to Carleton in 1790 in which they expressed their desire to remain under the jurisdiction of New Brunswick

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<sup>25</sup> *Ibid.* p. 339. Dorchester to Carleton dated 3 January 1787.

<sup>26</sup> *Ibid.* p. 342. Dorchester to Carleton dated 29 May 1787.

<sup>27</sup> Paradis, Roger. *Papiers de/Papers of Prudent L. Mercure: Histoire due Madawaska*. Madawaska, ME: Madawaska Historical Society, 1988. Volume II, p. 65. Dorchester to Carleton dated 18 September 1790. Also UNB. *Winslow Papers* (on line). Vol. 7-64.

<sup>28</sup> *Ibid.* Paradis. *Mecure Papers*. Vol. I, pp. 132-133. Also PANB. RS 108 – Land Petitions. Petition of Oliver Tibodo [Thibodeau] dated 1789 (F1036).

and for an increased government presence “for maintaining peace and good order”.<sup>29</sup> Costin was an English protestant who was living in the Madawaska settlement. He could be appointed to this office while the Acadians, who were Roman Catholics, could not be unless they took the Test Oath that would have caused them to renounce their faith.<sup>30</sup> New Brunswick also established a number of parish offices in the District of Madawaska of York County starting in 1792. This included such positions as Commissioners of Highways, Surveyors of Highways, Overseers of the Poor, a Fence Viewer, Constables, Pound Keepers, a Hog Reeve and the Clerk of the Parish. All of these positions were filled on a continuing basis, with occasional exceptions, until after the period of this study.<sup>31</sup> Carleton also formed a militia company at Madawaska in 1792. Presumably, this replaced the one that had been formed two years earlier by the Quebec authorities.<sup>32</sup> In 1792, Quebec asked the home government in Great Britain to arbitrate the boundary issue. Nothing appears to have come of this and William F. Ganong concluded, “At this point, the subject appears to have rested for many years. This was, no doubt, because the international boundary was becoming a subject of controversy, and both its greater importance

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<sup>29</sup> Raymond. Winslow Papers. p. 394 and Paradis. Mercure Papers. Vol. II, p. 160 Carleton to Dorchester dated 1 October 1790 and p. 161 Carleton to Rt. Hon. W.W. Grenville, the Home Secretary dated 9 October 1790. Also, PANB. Letterbook of the Lieutenant Governor of New Brunswick, Vol. 2 (mfms F297) and CO 188/4 (mfms F1382).

<sup>30</sup> Paradis. Mercure Papers. Vol. II, p. 169. Carleton to Dorchester dated 1 October 1790 and notes on the Test and Corporation Act by Roger Paradis, and Hannay, James. History of New Brunswick. 2 Vol. St. John, N.B.: John A. Bowes, 1910. Vol. I, p. 438. The Roman Catholics of New Brunswick were not able to participate in civil government and retain their faith until the Catholic Emancipation Act was passed by the British Parliament in 1829 and subsequently adopted by New Brunswick the same year. See Craig. The Land In Between. pp 107-108. This provided a fuller explanation of the complex laws.

<sup>31</sup> Paradis. Mercure Papers. Vol. II, pp. 25-27. Also Craig. The Land In Between. p. 115. She stated “Lists of parish officers, justices of the peace, and militia officers can be found in *The New Brunswick Almanac and Register* or *The Merchants’ and Farmers’ Almanac*”.

<sup>32</sup> Raymond. Winslow Papers. p. 395.

and its bearing upon the inter-provincial problem combined to postpone consideration of the latter". The question of jurisdiction may also have been eclipsed by the outbreak of war with Revolutionary France in 1783. In 1830, Great Britain directed that Quebec should exercise jurisdiction over the old Seigneuries of Temiscouata and Madawaska as far south as the mouth of the Madawaska River while New Brunswick would have jurisdiction below that. This direction did not appear to have any practical bearing on the question. The boundary issue resurfaced soon after the signing of the Webster-Ashburton Treaty in 1842 and was eventually resolved by an act of the British Parliament in 1851.<sup>33</sup>

In addition to being part of the civil and military administration of New Brunswick, and for a period Quebec, the inhabitants of Madawaska were also entitled to vote in the New Brunswick elections. While there was a problem with them voting in the elections of 1792 because of their Roman Catholicism, this was resolved by the time of the elections of 1809.<sup>34</sup> The Acadians were instrumental in

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<sup>33</sup> Ganong, William F. "A Monograph on the Evolution of the Boundaries of New Brunswick". Transactions of the Royal Society of Canada, Second Series, 1901-1902, Vol. VII, Section II. pp. 381-383. MacNutt. New Brunswick. pp. 82 and 314. MacNutt also ended the discussion of the border controversy between Quebec and New Brunswick in the 1790s without indicating any resolution and did not reintroduce it until the 1840s when the controversy resurfaced. Irish University Press. British Parliamentary Papers. Colonies: Canadian Boundary Vol. 2. Shannon: Irish University Press, 1969. (BPP/CCB) pp. 1-2. Grey to Elgin and Kincardine dated June 27, 1850. In 1850, Earl Grey, the Secretary of State for War and the Colonies, informed the Canadian Governor General, the Earl of Elgin and Kincardine, that a Committee of Arbitration was to be formed. Once its report was received, a Bill would be introduced in Parliament to enact it. This was necessary, as changes would be needed to the Quebec Act of 1774. This act, known as "An Act for the Settlement of the Boundaries between the Province of Canada and the Province of New Brunswick" was passed on 7 August 1851 (14 and 15 Victoria, CAP LXIII). McNutt. New Brunswick. p. 314. The boundary was finally agreed in 1851, with Lower Canada (Quebec) retaining the ancient Seigneuries of Temiscouata and Madawaska. Thus, after a period of 148 years, the Disputed Territory was no more.

<sup>34</sup> Chipman. Remarks. Appendix. p. x. Testimony of Peter Fraser at the trial of John Baker as transcribed from the Royal Gazette on 12 May 1828. Craig. The Land In Between. p. 108. Fraser introduced a "religiously neutral oath of allegiance" that the Roman Catholics could swear to and thus vote.

having the oath requirement amended as 20 of them complained in a petition to the House of Assembly in 1796 that they had not been allowed to vote in the last elections.<sup>35</sup> Throughout the early years, the inhabitants of the Madawaska settlement experienced a series of poor harvests caused by natural causes such as late springs, early winters and crop disease. Because its location created a shortened growing season, small changes in the weather could quickly bring on unexpected disaster.<sup>36</sup> In times of hardship, once the local resources had been exhausted, their only hope was to petition the New Brunswick government for relief. The first of these petitions was submitted in May 1797 and was the result of an early frost the previous fall that had damaged the harvest.<sup>37</sup> These petitions would occur frequently. In April 1813, P. Duperrie [Duperré], a militia officer and leading member of the Madawaska settlement, asked W.F. Odell, the Provincial Secretary, to provide assistance for 17 families of “savages” who were in need of provisions and were in distress.<sup>38</sup> Mount Tambora, a volcano in Indonesia, experienced a massive eruption in 1815, which so severely damaged the world’s climate that 1816 was referred to as “the year without summer”.<sup>39</sup> There was a general crop failure throughout the province and the Legislature voted £6,000 for relief efforts. Much of this went to the purchase of seed and provisions. While no specific petition relating

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<sup>35</sup> Paradis. Mercure Papers. Vol. II. p. 29. Also PANB. RS 24 Legislative Assembly Sessional Records. S10. Petition of Pierre Duperré dated 18 February 1796.

<sup>36</sup> Craig, Beatrice. “Agriculture and the Lumberman’s Frontier in the Upper St. John Valley, 1800-70”. The Journal of Forest History, Vol. 32, No. 3 (July 1988). p. 129.

<sup>37</sup> Paradis. Mercure Papers. Vol. II. p. 187. Petition of P. Duperry [Duperré] to Carleton, 1 May 1797. Also, PANB. RS 330. J. Petitions., 1797/2.

<sup>38</sup> PANB. RS 13. 3/a3. Madawaska County – Distress in 1813, 1833 and 1874.

<sup>39</sup> Piper, Lisa. “Backward Seasons and Remarkable Cold: The Weather over Long Reach, New Brunswick 1812-1821”. Acadiensis, XXXIV, 1 (Autumn, 2004). pp. 31-55. Piper provides a good description of the effects of this eruption on New Brunswick weather and the crops.

to the Madawaska area has been found, they undoubtedly suffered as part of this natural disaster and received government assistance.<sup>40</sup> Further crop failures were experienced in 1817, 1828, 1829, 1833, 1840 and 1855 and requests for assistance were made in many of these years.<sup>41</sup>

It was left to the states of Massachusetts and later Maine to challenge the British jurisdiction in the disputed territory. Massachusetts initially paid little attention to this area. It was the furthest and most remote part of the District of Maine. The only notable exercise of jurisdiction was the sale of what is much of present day Aroostook County to William Bingham as part of the Bingham "Back Tract" Purchase, in 1793 and the subsequent survey of it by Park Holland in 1794<sup>42</sup>. When Park Holland visited the Madawaska settlement in October 1794 as part of his survey of the Bingham Purchase, he met "a Mr. Everett formerly from New Hampshire, who was a hunter, and who had been here three or four years".<sup>43</sup> Holland's visit did not go unnoticed as Carleton commented on it in a letter to the Home Secretary in January 1795. His main concern was that this American activity might challenge British control of the Grand Communications Route.<sup>44</sup> In addition to Holland, the Madawaska settlement had another notable visitor during this period. Alexander Baring, later Lord Ashburton, passed through the area in the fall of 1797

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<sup>40</sup> Fisher, Peter. The First History of New Brunswick. 1825. Reprinted 1980 and 1983. Woodstock, NB: Non-Entity Press, 1983. p. 29.

<sup>41</sup> Craig. "Agriculture". p. 129.

<sup>42</sup> Allis, Frederick S. Jr., ed. William Bingham's Maine Lands 1790-1820. 2 Vol. Boston: The Colonial Society of Massachusetts, 1954. pp 102 and 217.

<sup>43</sup> Ibid. p. 222.

<sup>44</sup> Paradis. Mercure Papers. Vol. II. p. 172. Carleton to the Duke of Portland dated 15 January 1795. Also UNB. Loyalist Collection. LGNB Despatches Sent. Pp. 31-32.



as part of his inspection of land settlement practices along the American frontier.<sup>45</sup>

The Massachusetts government also made other land grants in the area, such as the Plymouth Grant of 1806 where Fort Fairfield is now located.<sup>46</sup>

In the years immediately following the end of the War of 1812, it was easy to demonstrate that British jurisdiction had been well established within the Madawaska settlement for over 30 years. In fact, since the settlement was started circa 1786, all of the usual civil and military institutions had been formed and the Acadian settlers' religious beliefs were being accommodated in order to allow them to vote. Although the inter-provincial boundary had not been firmly established, New Brunswick was allowed by mutual agreement with Quebec to exercise jurisdiction within the Madawaska settlement. This exercise of authority was unchallenged by the United States. While the United States continued to claim the disputed territory, its government offices were far away from this remote, northeastern corner of its land. The state government of Massachusetts, which would have owned the disputed territory as part of the District of Maine, was also far away. This is not to say that Americans had not visited the disputed territory. Surveyors, such as Park Holland, had passed through the area. During the War of 1812, there was concern that the Americans might threaten the Grand Communications Route but, other than a couple of isolated incidents, nothing

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<sup>45</sup> Allis. Bingham's Maine Lands. Vol. II, pp. 904-905.

<sup>46</sup> Wiggin, Hon. Edward. History of Aroostook County, Maine. Presque Isle, ME: The Star-Herald Press, 1922. As found at: <http://files.usgwarchives.org/me/aroostook/history/wiggin.txt>. There is a copy in the Harriet Irving Library – Archives and Special Collections.

significant came of this.<sup>47</sup> It was left to a private individual to issue the first challenge to British jurisdiction.

### **The Development of the Agreement about Jurisdiction – 1818 to 1825.**

Timber was one of the staple exports of the New Brunswick economy in the early 19<sup>th</sup> century. As the more accessible trees were cut, lumbermen began moving farther and farther inland, along the major rivers. Stands of tall timber, especially white pine, attracted British and American lumbermen.<sup>48</sup> Among them was a group from Maine. The leader appeared to be Captain Nathan Baker. According to information provided by Captain Pierre Du Perre (Duperré), Baker arrived at the Madawaska settlement in about February 1818. Duperré reported, “At that time he [Baker] wished to introduce the laws of the states; [he] brought a magistrate along with him from the States, to form a corporation, and desired my concurrence”. Duperré informed Baker that he, and the other French settlers, would have nothing to do with this. Later in the summer of 1818, Baker brought his family from the Kennebeck River. Two or three other American families joined him. They started clearing farms and cutting timber. When the French settlers complained about them cutting trees on their lots, Baker ignored them as he said that the wood belonged to the States. As Duperré commented, Baker appeared to be “a man who takes much

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<sup>47</sup> American interference with the mail during War of 1812 was reported in Library and Archives Canada (LAC). RG8, “C” Series, Vol. 284. Major General Thomas Saumarez to Sir George Prevost dated 16 November 1813 when an American tried to entice a soldier carrying the mail to desert and LAC RG 8, “C” Series, Vol. 284, p. 131-134. Saumarez to Prevost’s Military Secretary dated 7 June 1814 when another American agent tried to bribe a native to interfere with the mail.

<sup>48</sup> Judd, Richard W. Aroostook: A Century of Logging in Northern Maine. Orono, ME: The University of Maine Press, 1989. pp. 8-9.

upon him”.<sup>49</sup> This caused great concern amongst the Acadian and Canadien settlers who petitioned the New Brunswick government to ask that “our jurisdiction be enforced as usual in Madawaska” because the American settlers were trying to convince them that American jurisdiction was in force.<sup>50</sup>

These actions by Baker were also of concern to the government in Fredericton. Both Judge J. Murray Bliss, a member of the Supreme Court, and Thomas Wetmore, the Attorney General, were in correspondence with Duperré and had asked him to keep them apprised of any developments. In addition to adopting a “wait and see” attitude towards this challenge to British jurisdiction, this information was forwarded to the British ambassador in Washington, Charles Bagot. He discussed this matter with John Quincy Adams, the American Secretary of State who, in Bagot’s words, appeared “to think that the persons referred to ... are, in reality, what are called squatters, and must be dealt with accordingly”. Bagot went on to say that the New Brunswick government “need not scruple to displace them by whatever is the ordinary process resorted to against persons of this description” and that, if their names were given to him, Bagot would “request the Governor of Massachusetts to take such steps in respect to them as may depend upon him”.<sup>51</sup> This reply was significant as it is the earliest evidence to support the British contention that there was an understanding with the American government that Great Britain would exercise jurisdiction within the disputed territory pending a

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<sup>49</sup> Van Buren. Maine Boundary. p. 72. Senate Doc. No. 130. Du Perre to Wetmore dated 20 February 1819.

<sup>50</sup> Ibid. p. 71. Senate Doc. No. 130. Du Perre to Bliss dated 5 September 1818.

<sup>51</sup> Ibid. pp. 70-71. Senate Doc. No. 130. Bagot to Barclay dated 8 December 1818.

resolution of the boundary question. It also indicates that the British and American governments felt that the American's home state remained responsible for their actions. It appears that the British issued a "writ of ejectment" against at least one of the Americans, John Harford, in July 1819. Harford appeared in court in Fredericton but the suit seems to have gone into limbo when he appealed to the Governor of Massachusetts.<sup>52</sup> It is probable that the other cases also faded away in light of the legal entanglements. In any case, Baker's efforts to establish American jurisdiction came to nought. The American community, located above the Madawaska settlement, continued to grow. Meanwhile there were activities taking place in the District or Province of Maine that would have a more profound effect on the exercise of jurisdiction within the disputed territory.

The earliest move towards independence for Maine from Massachusetts occurred in 1786 to 1787 when several conventions were held. Massachusetts was occupied by Shay's Rebellion and passed several acts to placate the residents of Maine.<sup>53</sup> Votes for separation occurred on a regular basis but were defeated. Momentum was regained after the War of 1812 and was influenced by the Hartford Convention where the New England states met to debate their grievances against the Federal government and to consider separation from the Union.<sup>54</sup> The citizens of Maine felt that Massachusetts had failed to defend the District during the War of

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<sup>52</sup> Pawling, Micah A., ed. Wabanaki Homeland and the New State of Maine: The 1820 Journal and Plan of Survey of Joseph Treat. Amherst, MA: University of Amherst Press, 2007. p. 168.

<sup>53</sup> Hatch. Maine: A History. pp. 110-112. Encyclopaedia Britannica on-line - <http://www.britannica.com/EBchecked/topic/539193/Shayss-Rebellion>. Shay's Rebellion, or the New England Regulation, was an uprising in Western Massachusetts over high taxes and difficult economic conditions that lasted from August 1786 to February 1787.

<sup>54</sup> Hatch. Maine. p. 123.

1812 and that it was neglecting Maine's interests in other areas such as education.<sup>55</sup> It was a hard fought struggle, both in the Massachusetts' Legislature and also in the United States Congress. Finally, as a result of the "Missouri Compromise", Maine was admitted as a state on 15 March 1820.<sup>56</sup> Among the leaders of the separation party were William King, the first state governor, and William Pitt Preble.<sup>57</sup>

Control of the undivided public lands became an emotional issue in Maine politics. One of the anomalies of separation was that Massachusetts retained ownership of half of the "wild" or public lands in Maine.<sup>58</sup> From the start, Maine wanted control of all of them. In fact, Governor King resigned in 1821 partially because the Legislatures of Maine and Massachusetts denied his proposal for Maine to purchase Massachusetts's interests in them.<sup>59</sup> The lands within the disputed territory were of special interest. Having just won independence from Massachusetts, Maine politicians wanted all of their "inheritance", which included the full extent of the American claim under the terms of the Treaty of Paris. As the years passed, Maine became weary of the protracted boundary negotiations between Great Britain and the United States. In the absence of visible action by the Federal government, Maine took unilateral action to exercise jurisdiction within the disputed territory, in the expectation of influencing the outcome of the boundary discussions. This issue was a constant feature of the Maine political agenda. References to the "North Eastern Boundary" question were a standard part of the Governor's annual

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<sup>55</sup> *Ibid.* pp. 126-129.

<sup>56</sup> *Ibid.* p. 168.

<sup>57</sup> *Ibid.* pp. 120 and 122.

<sup>58</sup> *Ibid.* pp. 130 and 175.

<sup>59</sup> *Ibid.* p. 175

message to the state legislature.<sup>60</sup> By the 1830s, Maine's actions in this regard caused the British Minister in Washington to write "the people of the state of Maine are prepared to proceed to very great lengths, and to risk almost a state of war upon the frontier, with the false hope of thereby forcing the two governments to an immediate settlement of the Boundary Question".<sup>61</sup>

The first visible exercise of American jurisdiction within the disputed territory occurred in 1820. Working on behalf of the United States government, True Bradbury conducted a census of the upper reaches of Penobscot County, Maine. In addition to Houlton and the New Limerick Plantation, the Madawaska Settlement was also enumerated. The reason for including the Madawaska Settlement was given as: "[Great Britain's] right to the possession of the Madawaska Settlement was not called in question, or even alluded to at Ghent, because it had not been ascertained at that time, whether that settlement lay East or West of the line drawn due North from the source of the St. Croix [the border agreed upon in 1783]. That line was not surveyed till the years 1817-1818: and this is also the reason why the inhabitants of Madawaska were included in the American Census of the year 1820, and not in that of the year 1810."<sup>62</sup> This exercise of jurisdiction seems to have

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<sup>60</sup> *Ibid.* pp. 265 – 266. Hatch quoted the Governors' messages for 1820, 1822, 1824, 1825, 1826 and 1829. Similar statements were made during the 1830s and the tone of the message reflected the state of the boundary negotiations.

<sup>61</sup> UNB. Loyalist Collection. LGNB Despatches Received 1837-1845. (FC LPR .N4L5D4.) Vol. XVII – Despatches Received 1837. p. 718. Fox to Harvey dated November 27, 1837.

<sup>62</sup> Definitive Statement, on the part of the United States, of the Case Referred, in pursuance of the Convention of the 29th September, 1827, between the said States and Great Britain, to His Majesty the King of the Netherlands, for his decision thereon. (Washington: Office of the United States' Telegraph, 1829). p. 59. This information was found on the definitive website pertaining to the Madawaska Settlement, <http://www.upperstjohn.com/>, that is maintained by Chip Gagnon, Ph.D., Associate Professor of Politics at Ithaca College, Ithaca, NY.

gone unnoticed by the British authorities. This was an oversight that would come back to haunt them as it was later used by the United States to substantiate its claim that Great Britain, and New Brunswick, were not exercising jurisdiction within the Madawaska Settlement.<sup>63</sup>

After the 1820 census, the land agents of Maine and Massachusetts became the most frequently visible representatives of the United States within the disputed territory. While the main purpose for their visits was to prevent the cutting of illegal or “trespass” timber, they also attempted to exercise jurisdiction by making land grants and building roads. In addition to the Maine appointed census taker, Maine also dispatched Major Joseph Treat in 1820 to “explore the public lands upon the St. John, and its branches west of the meridian line from the monument”<sup>64</sup>. The British first mentioned the presence of American land agents in the disputed territory in 1821, when it was reported that a United States Senator was in the area and that the Americans were seizing timber at Tobique [present day Perth-Andover, NB].<sup>65</sup> The Maine version of this event was, that in response to reports of illegal cutting on the Aroostook, De Chute, Presqu’Ile and Meduxnekeag rivers, Benjamin J. Porter was sent to either settle with the trespassers or to arrest them. Apparently, he reached an

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<sup>63</sup> Van Buren. Maine Boundary. pp. 296, 298-299 and 303. House Doc. No. 90. American Secretary of State Henry Clay to British Minister in Washington Charles R. Vaughan dated February 20, 1828, Vaughan to Clay dated February \_\_ 1828 and Clay to Vaughan dated March 17, 1828. In an exchange of letters, Clay rejected the British claim to have exercised exclusive jurisdiction within the Madawaska settlement because they did not protest when the American government conducted the 1820 census there. When the British replied that they had objected, Clay responded that there was no correspondence to substantiate that statement.

<sup>64</sup> Ibid. p. 117. Senate Doc. No. 171. From the Report of the Joint Select Committee of the Senate and House of Representatives of the State of Maine, in relation to the northeastern boundary of the State dated January 26, 1828. Pawling. Wabanaki. p. 1.

<sup>65</sup> The National Archives (TNA), UK. CO 188/31. Sir Howard Douglas Letterbook. Letter from Downing Street to L.G. Smyth dated 13 November 1821.

agreement with the lumbermen whereby they paid a fee for the timber already cut and agreed not to cut any additional timber. Maine sent another agent, James Irish, in 1822 to stop the cutting of timber on the Aroostook, Maduxnekeag and Presqu'Isle rivers. According to the Maine records, he was successful.<sup>66</sup> However, the illegal cutting of timber continued to be a great concern, which was aggravated by rumours of expanded British settlements in the area.

In 1824, Henry Clay, the American Secretary of State, conveyed these concerns via Henry U. Addington, the British Minister in Washington, to the British government and to Sir Howard Douglas, the Lieutenant Governor of New Brunswick. The details of this were based on letters such as the one from Samuel Cook, the Maine Land Agent, which was dated March 25, 1824.<sup>67</sup> In the letter, Cook complained about the timber cutting in the disputed territory and predicted, “they [the British government] intend to get all the timber up the Aroostook and up to Madawaska, unless our Government take some measures to prevent it”. Other letters warned of British intentions to make additional grants of land and to issue timber-cutting permits in lands that were claimed by Maine. A committee of the Senate of the State of Maine had brought the allegations to the attention of the American government and Clay informed the British that he had been instructed “by the President to demand that immediate and efficacious measures be adopted to put a

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<sup>66</sup> Van Buren. Maine Boundary. p. 118. Senate Do. No. 171. From the Report of the Joint Select Committee, 1828 and p. 59, the appointment of James Irish appears as Annex B to the Report of S.B. Barrell dated February 11, 1828. Barrell was appointed as a special agent by Henry Clay, the American Secretary of State, to investigate the Baker Affair.

<sup>67</sup> TNA. CO 188/31. Sir Howard Douglas Letterbook. pp. 35 to 50. Letter from H.U. Addington to Sir Howard Douglas circa April or May 1825. Addington sent him Clay's letter of March 27, 1825 along with a number of other enclosed letters such as the one from Samuel Cook, the Maine Land Agent, dated 25 March 1824.



stop to them all". He also expected that "a full indemnity and reparation be made to the States of Massachusetts and Maine, for the value of the timber which has been cut and removed from their lands". The letter from the Maine Senators did acknowledge that "the territory upon which most of the depredations have been and are committing, is situate from sixty to one hundred miles from any settlements by our citizens, and where legal process cannot be expected to produce much effect". In a prophetic statement, they said that there was little use in driving out the depredators unless there was some way to prevent their return. It would be expensive to mount such an expedition and, if done, would need to involve both Massachusetts and the National Government. They also realized that any direct action should wait "until the result of the pending negotiations shall be known".<sup>68</sup> In retrospect, this provided a campaign plan for the Aroostook War of 1839. Except 15 years later, Maine's frustration with the slow pace of the boundary negotiations led it to take unilateral action to expel the depredators and to occupy the territory in order to prevent their return.

The British position was presented to the American government in a letter dated 23 May 1825. Addington very politely rejected the claims by the State of Maine to the lands within the disputed territory. Quoting a reply received from Sir Howard Douglas, he reminded Clay that the British had exercised jurisdiction in the Aroostook and Madawaska River valleys for some time. He also stated that this area had been considered to be British territory and that the American government had

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<sup>68</sup> Van Buren. Maine Boundary. pp. 259 to 264. House Doc. No. 90. Letter from Mr. Clay to Mr. Addington dated March 27, 1825 that included an Extract of a letter from Samuel Cook, Esq., Assistant Land Agent dated March 25, 1824 and four other letters of a similar nature.

not challenged this until recently. The reference to the American land claim related to the boundary commission that was formed under Article 5 of the Treaty of Ghent of 1814 and which was still trying to find the highlands as per the 1783 Treaty of Paris. Addington restated the British claim that the northern boundary of the United States ended at Mars Hill. Based on this, the New Brunswick government was not going to alter its policies and that any changes to the jurisdiction would have to be agreed upon between the United States and British governments. However, it was acknowledged that New Brunswick had issued timber-cutting licenses in these areas.<sup>69</sup> While not mentioned, New Brunswick had also either made a land grant or issued a settlement ticket in the Madawaska settlement to Francois Violet and Celestin Thibodeau in 1824 and to Simon and Joseph Hebert in 1825. Another land grant to Samuel Nevers in 1824 for land at Baker Brook where John Baker, his business partner, was building a mill for him was initially granted and then later rescinded because of the boundary question.<sup>70</sup> It has been suggested that Baker had asked Nevers to obtain the grant in his name, as Baker could not apply himself, as he was not a British citizen.<sup>71</sup> In retrospect, the American concerns were justified although the reasons for them had been greatly exaggerated in the telling. The

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<sup>69</sup> *Ibid.* pp. 264 to 266. House Doc. No. 90. Letter from Mr. Addington to Mr. Clay dated May 23 1825.

<sup>70</sup> TNA. CO 188/35. Sir Howard Douglas letterbook for 1827. p. 501. At PANB, see the petition of Samuel Nevers for land (Samuel Nevers, 1824, Victoria County, microfilm F4198, PANB). Also see Land Petitions of Amant Henry Vilett, Elias Tibodeau and John R. Vilett (1824, Madawaska County, microfilm F41990), Celestin Thibodeau (1824, Victoria County, microfilm F4199, PANB), Joseph Hebert (1825, land grant, microfilm F16311) and Simon Hebert (1825, Land Grant, microfilm F16311).

<sup>71</sup> Paradis, Roger. "John Baker and the Republic of Madawaska: An Episode in The Northeast Boundary Controversy". *Dalhousie Review*, Vol. LII (1972/1973). p. 80.

Madawaska settlement was growing and, by default, British jurisdiction was being extended.

This exchange of letters caused Sir Howard Douglas to ponder the right of New Brunswick to exercise jurisdiction within the disputed territory. In a letter to the Earl of Bathurst, the Secretary of State for War and the Colonies, dated 19 August 1825, he wondered if New Brunswick should continue to exercise jurisdiction in the disputed territory other than over cutting timber and what was the status of the militia and the magistrates there.<sup>72</sup> Bathurst confirmed the British position to Sir Howard Douglas in November 1825 when he wrote:

You will not abandon any rights of practical sovereignty which may have been exercised in any parts of the disputed district which have been “de facto” opened and located and held as British settlements for any period along the last century or even later, and although it is advisable to abstain from cutting timber on the as yet unoccupied parts of the territory claimed from us by the United States. Until the question be decided, you will equally refuse to recognize any license from that government to cut timber in these districts, but immediately and simply protest against that or any other attempt to exercise authority until you have received further instruction from His Majesty’s government on the subject.<sup>73</sup>

Just as the letter from the Maine Senators telegraphed Maine’s future intentions, so did Bathurst’s letter lay out the British position. They would continue to exercise jurisdiction and to resist any attempts by the United States to do so, pending the resolution of the border issue. In reality, only Maine with the support of

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<sup>72</sup> TNA. CO 188/31. Sir Howard Douglas Letterbook. pp. 100 to 101. Letter from Howard Douglas to Bathurst dated August 19, 1825. Henry Bathurst, the third Earl Bathurst, was Secretary of State for War and the Colonies from 1812-1827.

<sup>73</sup> UNB. Loyalist Collection. LGNB Despatches Received, Vol. VII, 1825-1826. pp. 175-177. (originally sighted in Paradis. Mercure Papers. Vol. III, p. 115)

Massachusetts would challenge British jurisdiction in the disputed territory. The American Federal government had other more important concerns.

The next challenge was not long in coming. In early October 1825, reports were received of two Americans in the Madawaska settlement. These were George W. Coffin and James Irish, the land agents for Massachusetts and Maine, respectively. Acting under the authority of resolves from their respective state legislatures, they proceeded to the Madawaska and Aroostook Valleys to survey the extent of depredations, to make land grants and to make arrangements to licence timber cutting.<sup>74</sup> They made land grants to John Baker and James Bacon of 100 acres each for land around Baker Brook. In addition, they appointed Bacon as an agent to sell timber cutting permits and to seize illegally cut timber.<sup>75</sup> Their visit coincided with a New Brunswick militia-training day and so they offered money to the militiamen if they did not report for training. Their reason for doing this was that “this part of the country belonged to them [i.e. Maine and Massachusetts]”. Major Fraser, the commanding officer of the 4th battalion of York County militia that had been reorganized in Madawaska the previous year, reported this information to Lieutenant Colonel George Shore, the militia Adjutant General. Fraser noted that, if he had been aware of their efforts to interfere with militia training, he would have

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<sup>74</sup> Van Buren. Maine Boundary.p. 272. House Doc. No. 90. Letter from Levi Lincoln, Governor of Massachusetts to Henry Clay dated December 6, 1825.

<sup>75</sup> Ibid. pp. 269 to 271. House Doc. No. 90. Copies of land grants to Baker and Bacon and Bacon’s appointment as an agent to sell timber permits.

arrested them before they left the area.<sup>76</sup> The land agents also visited the Aroostook Valley where they appointed Samuel Cook of Houlton to sell timber licences there.<sup>77</sup>

This attempt by Maine and Massachusetts to exercise jurisdiction generated a steady stream of letters between the British and American governments. Charles R. Vaughan, the new British minister in Washington, strongly protested this incursion in a letter to Clay. His main point was “that, so long as the question of the boundary remains in the present, undecided state, it will be the duty of our Governments to control, mutually, any conduct on the part of their respective subjects, which is calculated to produce disunion and disagreement”.<sup>78</sup> This reference to the ongoing boundary negotiations that were being conducted under Article 5 of the Treaty of Ghent struck a responsive note with Clay. In letters to the Governors of Massachusetts and Maine, he asked for their forbearance pending resolution of the boundary question. Neither party, British or American, should do anything that would alter the situation within the disputed territory from the status quo that existed when the Treaty of Ghent was signed or that would “give just inquietude to the other [party]”. He also said that their “remonstrance has had the desired effect” and that the British had stopped issuing timber cutting licenses in the disputed territory.<sup>79</sup> This measure was favourably received by Massachusetts, which suspended its

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<sup>76</sup> *Ibid.* p. 267. House Doc. No. 90. Letter from Major J.S Fraser to the Hon. Lt. Col. George Shore, Adjutant General dated October 8, 1825.

<sup>77</sup> TNA. CO 188/33. Sir Howard Douglas Letterbook 1826. pp. 31-36. In the Petition to the King from Council and House of Assembly of NB (1826), it is stated that the American land agents appointed agents at Madawaska and Aroostook to issue permits for cutting. Maine State Archives. The Journal of George W Coffin, Massachusetts Land Agent, September and October. 1825. p. 60.

<sup>78</sup> Van Buren. *Maine Boundary*. p. 266. House Doc. No. 90. Letter from Vaughan to Clay dated November 15, 1825.

<sup>79</sup> *Ibid.* pp. 273 to 274. House Doc. No. 90. Letter from Clay to Levi Lincoln, Governor of Massachusetts dated December 15, 1825.

resolution concerning the sale of public lands and the sale of timber licenses.<sup>80</sup> It is perhaps significant that the papers relating to the Irish/Coffin affair provided to Congress by Clay as House Document No. 90 dated January 20, 1829 only included the responses from Massachusetts. Maine appears to have followed a similar course of action although the documentary evidence has not been found.

Nonetheless, an informal agreement about the exercise of jurisdiction within the disputed territory had been reached. The basis for this agreement was an understanding that neither party, British or American, should do anything that would alter the situation within the disputed territory from the status quo that existed when the Treaty of Ghent was signed or that would “give just inquietude to the other [party]”. Interestingly, Clay first articulated this understanding in a letter to the governors of Maine and Massachusetts. Clay passed a copy of this letter to Vaughan on January 18, 1826.<sup>81</sup> The British adopted this understanding about the agreement. In 1827, Vaughan wrote to Clay and, in his letter, indicated that Sir Howard Douglas had “abstained from exercising any authority over the unoccupied parts of the disputed territory, excepting for the purpose of preserving it in its present state”.<sup>82</sup> The British understood that this meant they could continue to exercise jurisdiction as they had been doing for almost 40 years. An underlying assumption was that, as the inhabited area within the disputed territory expanded, so would the British jurisdiction. This was done during the next decade as the Madawaska settlement

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<sup>80</sup> *Ibid.* p. 275. House Doc. No. 90. Statement by the Commonwealth of Massachusetts dated June 19, 1826.

<sup>81</sup> *Ibid.* p. 271. House Doc. No. 90. Clay to Vaughan dated January 18, 1826.

<sup>82</sup> *Ibid.* p. 279. House Doc. No. 90. Vaughan to Clay dated September 17, 1827.

extended up the St. John River valley and more settlers moved into the Aroostook River valley. The British readily acknowledged that this exercise of jurisdiction would not affect the outcome of the boundary negotiations. As the United States did not have any presence within the area, this extension of jurisdiction would not affect the Americans. Significantly, Henry Clay, the American Secretary of State, had told the governors of Maine and Massachusetts about this agreement and what the Anglo-American understanding was. It would have been reasonable to expect this agreement to prevent any friction within the disputed territory until such time as the boundary question was resolved.

#### **Challenges to the Agreement – 1827 to 1831.**

As the furor created by the brief visit of Land Agents Irish and Coffin to the disputed territory subsided, it appears to have left behind the seeds of further dissent. This manifested itself in the summer and early fall of 1827 in both the Madawaska settlement and in the Aroostook Valley. In the first case, three American settlers, John Baker, James Bacon and Charles Studson, were charged with a number of offences relating to their declaration that the Madawaska settlement was American and not British territory. On the 4<sup>th</sup> of July 1827, Baker and his American associates raised an American standard and declared “the place to be the territory of the United States”. They then asked some of the Acadian-Canadien residents to sign a paper stating that they “oppose[d] the execution of the laws of Great Britain”. Baker also attempted to “obstruct the passage of His Majesty’s Mail” and declared that he “had received orders from the United States to stop the conveyance of the mail”. Later, Baker and his associates raised a United States flag and stated that they had “bound

themselves to resist by force the execution of the Laws of Great Britain”.<sup>83</sup> They put these words into action when, on 11 August 1827, they prevented Joseph Saufason [or Sanfacon], a New Brunswick constable, from serving a writ on one of their members, James Bacon.<sup>84</sup> They were duly arrested, taken to Fredericton and tried in the Easter Term of the New Brunswick Supreme Court in May of 1828.

The main point to be tried was whether or not Baker and his associates had tried “to subvert the Government of the Province [New Brunswick], and to excite sedition and disaffection among His Majesty’s subjects in the Madawaska Settlement”.<sup>85</sup> Baker’s defence was that he was an American citizen and that he was in the territory of the United States when these events took place. The trial proceedings went on to examine whether or not Great Britain had the right to exercise jurisdiction in the Madawaska Settlement and the disputed territory by extension, and whether or not Baker had placed himself under the protection of British law.<sup>86</sup> It was acknowledged by Thomas Wetmore, the Attorney General, that the area was claimed by both the United States and Great Britain, and that the proceedings of the trial would not alter that. He went on to say “this country was once clearly under the Government of the Crown, and had continued so,

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<sup>83</sup> Chipman. Remarks. p. vi. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827)

<sup>84</sup> Ibid. p. x. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827). Testimony by Constable Joseph Saufason. Van Buren. Maine Boundary. p.67. Senate doc. No. 130. Deposition of Joseph Sanfacon dated 9 November 1827.

<sup>85</sup> Ibid. p. vii. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827)

<sup>86</sup> A fuller account of Baker’s trial and the events leading up to it can be found in Paradis, Roger. “John Baker and the Republic of Madawaska: An Episode in the Northeast Boundary Controversy”. Dalhousie Review, Vol. 52 (1972/1973). pp. and Findlen, George L. “Under His Own Flag: John Baker’s Gravestone Memorial in Retrospect”. Maine History, 41:2, Summer 2002. pp. 117-139.



uninterruptedly, ever since, and after the creation of this Province, was under its Government, and there was no act whatever, by which the relative state of the parties could as yet be altered or affected. Indeed, it was necessary for the interest of both parties that some jurisdiction should be exercised, as without it the Territory could not be preserved".<sup>87</sup> Prior to this, both Wetmore and C. Peters, the Solicitor General had given a legal opinion to the Lieutenant Governor that the actions of Baker and his associates were "at least, a high misdemeanour in law, punishable by fine and imprisonment" and that legal action should be taken against them.<sup>88</sup>

As the trial progressed, evidence was presented that showed Baker had availed himself of the benefits of British laws by having writs for debt executed against his neighbours and by having collected the bounty for grain, a bounty that non-citizens or aliens could not claim. He also had 300 logs seized in 1824 that he was allowed to redeem as he considered himself to be a resident of New Brunswick and wanted to become a British citizen.<sup>89</sup> Baker's desire to become a British citizen was substantiated by George Best, the Archdeacon of New Brunswick. Baker had come to him in 1824 or 1825 for conversion to the Church of England in what Best

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<sup>87</sup> Chipman. Remarks. p. viii. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827)

<sup>88</sup> Van Buren. Maine Boundary. pp. 293 to 294. House Doc. No. 90. Wetmore and Peters to Sir Howard Douglas, n.d. post 11 August 1827.

<sup>89</sup> Chipman. Remarks. p. ix and xi. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827) Testimony of George Morehouse, Henry G. Clopper and George Wood. Hannay. History of New Brunswick. Vol. 1, p. 435 and PANB RS 24. S38-M4, microfilm F17402. Message from William Black to the House of Assembly dated 22 January 1830 in which he advised that the 2<sup>nd</sup> Section of the Act of 13 Geo 2 Cap. 7 regarding the naturalization of aliens will be repealed. The Americans were also required to pay an "Alien Tax" that vexed them. Under the Alien Act passed under George III (13 Geo. 2 Cap 7), aliens (or foreigners) had to pay an annual tax. They were also required to take the Anglican Sacrament of the Lord's Supper before swearing the Oath of Allegiance if they wanted to become British citizens. This is why Baker was considering becoming a member of the Church of England. This requirement was lifted in 1830.

thought was Baker's preparation to become a British citizen. The conversion did not take place and Best heard no more of Baker after the United States land agents (Coffin and Irish) came through.<sup>90</sup> Other evidence was presented showing that Baker had attempted to stop Peter Siliste from carrying the mail in July of 1827 and that he had attempted to disrupt militia training in the same year. It was also confirmed that Baker had tried to obtain a land grant by using his business partner, Samuel Nevers, as the front man.<sup>91</sup>

Baker refused to defend himself as he considered himself to be an American citizen, living in American territory, and that the New Brunswick court had no jurisdiction. After being charged by the judge, Mr. Justice Chipman, the jury retired for about an hour and then returned with a verdict of guilty. The court chose to be lenient and Baker was sentenced to two months in the common gaol of the County of York and a fine of £25. While acknowledging that the territorial boundary dispute was a matter for Great Britain and the United States to resolve, the Court, in finding Baker guilty, did confirm that "the place in question [Madawaska Settlement]...[was] actually in the possession, and under the jurisdiction and laws of this Province" and that "the exercise and protection of those laws [should continue] until some Act of the King's Government should effect a change". This was based on the presentation of "a chain of evidence of clear possession and undisturbed jurisdiction on the part of this Province from the period of its first erection to the

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<sup>90</sup> TNA. CO 185/35. Sir Howard Douglas Letterbook for 1825. Statement by George Best, Archdeacon of New Brunswick dated November 23, 1827.

<sup>91</sup> Chipman. Remarks. p. x and xi. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827). Testimony of Peter Siliste (mail carrier), Simon Hebert (Captain of Militia) and George West (former Seizing Officer).

present time; a space of more than forty years”.<sup>92</sup> This determination echoed that given to the United States in 1825 and confirmed, at least in the British mind, the right of New Brunswick to exercise jurisdiction in the disputed territory, pending the resolution of the boundary issue.

The American settlers in the Aroostook River valley had also banded together to reject the exercise of British jurisdiction. On 17 September 1827, Constable Stephen McNeil went up the Aroostook River about 30 miles, to what was known as the “Upper Settlement”, to serve a writ against Joseph Arnold and to seize a cow that was in his possession. McNeil completed his task but was later overtaken by a group of 13 armed men. They took possession of the cow and threatened to arrest McNeil and send him to jail in Maine. They would have done so if Lewis Johnstone, their self-appointed magistrate, had issued a mittimus. They also threatened the life of any British sheriff or constable who came back to the area. Faced with this resistance, McNeil returned and reported the incident to George Morehouse, the magistrate who had issued the writ. This event was known as the “Restook Riot” in the correspondence of the period. New Brunswick proceeded with legal action against the thirteen men. Subpoenas were issued on 3 January 1828 and their trial would have occurred at about the same time as Bakers’. While charges were drafted, it does not appear that they were laid and so the case did not come to trial.<sup>93</sup>

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<sup>92</sup> *Ibid.* p. xii and xvi. Appendix No. II. Report of the Trial of John Baker (from the Fredericton Royal Gazette of May 12, 1827). Mr. Justice Chipman’s charge to the Jury and Verdict of the Jury.

<sup>93</sup> PANB. RS 76. 4a3a. Case of Joseph Arnold, 1827-1828. The draft charges have annotations that discuss whether or not the witness depositions were properly taken. The impression is that it was

While this was another case of American settlers rejecting British jurisdiction and attempting to establish their own, their situation did not elicit the sympathy of S.B. Barrell, a special agent sent on behalf of the President of the United States to investigate the events in the disputed territory. Barrell determined that settlement along the Aroostook River had started about 1822 and that, of the 40 settlers in the area, only nine were American citizens while the rest were British subjects. It seemed to him that most of these had left New Brunswick for what they thought was American territory in order to avoid debt. He also found that British magistrates had exercised jurisdiction in the area for the past three or four years. In fact, Arnold had earlier appealed to a British magistrate in the matter of the cow but did not receive the support that he had wanted. Barrell discovered that three settlers, James Arnold, William McCrea and John Bradley all claimed ownership of the cow. In order to resolve the case, the three claimants had referred the case to a group of local referees, or arbitrators, who had recommended a course of action that was agreed to. When these actions were completed, Arnold was left in possession of the cow. Apparently, the referral of cases to local referees was a common occurrence in remote communities. McCrea, finding himself without the cow, took his case to the British magistrate who found in favour of him. It was the serving of this writ, which reversed the referees' decision, which the settlers objected to.<sup>94</sup> It would seem that

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decided that there was not sufficient evidence to proceed with the trial. A mittimus is an archaic term for an arrest warrant and was in common use during this period.

<sup>94</sup> Van Buren, Maine Boundary, pp. 53 to 55. Senate Doc. No. 130. Report of the Special Agent. Barrell to Clay dated February 11, 1828.

this was more the basis for the rejection of British authority than motives of patriotism.

The events in the Madawaska settlement and on the Aroostook River occurred at a critical time during the boundary negotiations. A joint Anglo-American boundary commission was formed in accordance with Article 5 of the 1814 Treaty of Ghent. Its mission was to determine the course of the international boundary through the disputed territory and then on to the St. Lawrence River. Survey work began in the summer of 1817. Despite the best efforts of the survey parties that criss-crossed the territory over the course of several summers and a detailed analysis of the wording of the Treaty of Paris of 1783 and earlier boundary documents, the commission was unable to agree on the location of the “highlands”, and therefore the course of the boundary. Following discussions in London, it was mutually agreed in 1827 to submit the question to the arbitration of a “friendly Sovereign” as provided for in the Treaty of Ghent. After some debate, King William of the Netherlands was selected and, in early 1829, agreed to act as the arbitrator.<sup>95</sup>

The unrest in the disputed territory occurred as these plans were being made to refer the boundary question to arbitration. John Quincy Adams despatched S.B. Barrell as his special agent on a fact-finding mission. He was to determine the details of what was going on. This was a formal mission and Barrell was furnished with letters of introduction to Governor Enoch Lincoln of Maine and, through

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<sup>95</sup> Carroll, Francis M. A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842. Toronto: University of Toronto Press, 2001. This book contains valuable information on the negotiations and on the actual survey work. For information pertaining to the Article 5 boundary commission, see pp. 52-69, 85-94 and 147-155. An on-line copy of the Treaty of Ghent is available at this URL -[http://avalon.law.yale.edu/19th\\_century/ghent.asp](http://avalon.law.yale.edu/19th_century/ghent.asp).

Charles R. Vaughan, the British Minister in Washington, to Lieutenant Governor Douglas of New Brunswick. Barrell's report of the events that took place on the Aroostook and at the Madawaska Settlement during the summer and early fall of 1827 is perhaps the most balanced report of the period. Barrell presented a factual and unbiased account of the history of the settlements at Madawaska and along the Aroostook River and the events of the summer and fall of 1827. This was no doubt influenced by the instructions that were given to him by Henry Clay, the Secretary of State. In this Clay explained that the two governments shared a wish "that nothing should occur within the disputed territory to disturb the harmony between the two countries". Both parties were committed to use "forbearance and moderation". Barrell was to communicate this policy to any inhabitants of the area that he encountered and to urge them to refrain "from all acts of violence and from all unnecessary collision" as these might retard the efforts being made to settle the boundary issue.<sup>96</sup>

Barrell started in Houlton, Maine by interviewing those settlers from Aroostook who came to see him there. It is clear that he wanted to be a calming influence. In particular, he discounted an exaggerated statement made by William Dalton, one of the Aroostook settlers, "which has been productive of such excitement in all parts of the United States, and more especially in the State of Maine." In his sworn statement, Dalton alleged that the American settlers were living in such fear of a British incursion that "the inhabitants of the Aroostic

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<sup>96</sup> Van Buren. Maine Boundary. pp. 50 to 51. Senate Doc. No. 130. Clay to Barrell dated November 19, 1827.

settlement have been unwilling and *afraid* to sleep in their own houses”, that they had taken to living in the woods and that they “kept watch night and day, as in an Indian War”. Upon investigation, Barrell’s assessment was that Dalton’s statement was “substantially, and in every material point, false”.<sup>97</sup>

From there, Barrell proceeded to the Madawaska settlement to ascertain the background to the events there. He concluded “the laws of the Province of New Brunswick appear to have been always in force since the origin of the settlement”. His account of the events of 4 July 1827, the attempt to establish a local American government and the resistance in August 1827 to the writ issued against Bacon by Morehouse is straightforward, factual and neutral in tone. It substantiated the British accounts and, significantly, found that these events had occurred “without the authority or knowledge of the Executive of the State of Maine”. This clearly discounted any suspicion that Maine had, in some manner, instigated these events. Barrell concluded his report by saying that he had counselled the American residents to be “inoffensive and peaceable” while the American government was resolving the boundary issue.<sup>98</sup>

While Barrell was conducting his impartial investigation, Governor Lincoln despatched his own representative to the area, Charles Steward Daveis, who conducted an investigation that fully supported Maine’s actions. Daveis, a Maine lawyer, was later the United States Agent in Holland in 1829 as preparations were

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<sup>97</sup> *Ibid.* pp. 53 to 54. Senate Doc. No. 130. Report of the Special Agent. Barrell to Clay dated February 11, 1828, and pp. 285-286. Senate Doc. No. 90. Affidavit of William Dalton, sworn in Penobscot, Maine of 27 October 1827..

<sup>98</sup> *Ibid.* pp. 55 to 58. Senate Doc. No. 130. Report of the Special Agent. Barrell to Clay dated February 11, 1828.

being made for the King of the Netherlands arbitration. In a letter of introduction to Douglas, Lincoln said that Daveis “may inquire into concerns calculated to produce a war between the United States and Great Britain, unless, by the forbearance of injuries by New Brunswick and Maine, it may be prevented”. Daveis was also authorized to demand the release of Baker and to have the persons who arrested and took him to Fredericton “delivered up to be tried by the laws of this State, and dealt with as justice may require”.<sup>99</sup> This rhetoric was the complete opposite of the more calm instructions that Barrell had received. Douglas chose to react to this letter, and to Daveis’ mission, in the proper diplomatic manner. He politely, but firmly, refused to recognize Daveis’s mission and informed Lincoln that he should direct his concerns to the General Government in Washington.<sup>100</sup> As events would show, this was the proper course of action. His successor’s successor, Sir John Harvey, would have done well to emulate him.

At the same time, Lincoln both fanned and banked the fires of outrage. In a Proclamation dated November 9, 1827, he decried the actions of Great Britain and the “many trespasses” committed “upon the sovereignty of Maine”. After pledging that the government would protect them, he urged those American citizens who were affected to “exercise forbearance and peace” while the matter was being resolved.<sup>101</sup> An exchange of letters between Lincoln and Clay followed. Lincoln urged “against the submission to a foreign umpire of the territorial and jurisdictional right of

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<sup>99</sup> *Ibid.* p. 168. Senate Doc. No. 171. Lincoln to Douglas 5 November 1827.

<sup>100</sup> UNB. Loyalist Collection. Sir Howard Douglas Letterbooks (FC LPR N4 L5L4). p. 114. Douglas to Lincoln, November 15, 1827.

<sup>101</sup> Van Buren. *Maine Boundary*. pp 170-171. Senate Doc. No. 171. A Proclamation by the Government of the State of Maine, November 9, 1827.



Maine". The possible choice of King William of the Netherlands concerned him as King William was seen as a man "who does not follow the law but looks for a compromise". He apparently believed that a strict application of the law would produce a result that was favourable to Maine whereas a compromise solution would not. Most significantly, he charged, "Maine has not been treated as she has endeavoured to be".<sup>102</sup> Clay, with the concurrence of the President, challenged Lincoln on this last statement. While assuring support for Maine, he reminded Lincoln of the nation's international obligation under the Treaty of Ghent. This could be seen as giving Lincoln a remedial lesson on federal versus state jurisdiction. There was also a thinly veiled reminder that the alternative to negotiation was war, an alternative that Clay did not favour at that time. Clay reassured Lincoln that the General Government "has been endeavouring, with the utmost zeal...to promote the true interests of the United States and the State of Maine."<sup>103</sup>

As expected, Daveis' "report upon certain facts relating to aggressions upon the rights of the State, and of individual citizens thereof, by inhabitants of the Province of New Brunswick" was very partisan in nature. He justified the actions of the Aroostook settlers over the matter of Arnold's cow as they were on American territory and the "authority of New Brunswick" did not apply to them. He also accused the British of harassing the settlers, seizing their timber and treating them as "trespassers and intruders on Crown lands". He saw this as part of a plan to drive

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<sup>102</sup> *Ibid.* pp. 169-170. Senate Doc. No. 171. Lincoln to Clay, November 16, 1827.

<sup>103</sup> *Ibid.* pp. 171-172. Senate Doc. No. 171. Clay to Lincoln, November 27, 1827.

the American settlers out of the area. In a similar manner, he justified the actions of the Americans in the Madawaska settlement. He claimed that the first settlers there were “ancient French neutrals” [Acadians] that had gone there to escape British jurisdiction. The American settlers arrived in 1817 and considered the land to be within the United States. They brought a magistrate with them and had intended to “incorporate”. According to him, they had formed both a new settlement called “Chateuqua” and a militia on authority from Maine. As at Aroostook, he accused the British of harassing the American settlers and said they were trying to remove them as “trespassers and intruders”. Daveis concluded that much of Maine was under foreign jurisdiction and “incorporated” into New Brunswick.<sup>104</sup> Maine’s response to the report was to pass a series of Resolves that demanded the United States provide Maine with “defence and protection against foreign aggression”. If this were not done, then Maine would act on its own behalf. Maine also wanted the United States government to demand Baker’s release from jail. In turn, Maine would provide relief for Baker and his family.<sup>105</sup>

Following the trial of Baker and his associates, the crisis passed and a degree of normalcy returned to the disputed territory. Another American delegation visited the area in the summer of 1828. Judge William Pitt Preble had been appointed to assist Albert Gallatin in preparing the American statement that would be presented to King William as part of the arbitration process. Mr. John G. Deane, a member of

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<sup>104</sup> *Ibid.* p. 175-193. Senate Doc. No. 171. Report of C.S. Daveis, January 31, 1828. The quotes are found on pages 179, 181, 192 and 193.

<sup>105</sup> *Ibid.* p. 194. Senate Doc. No. 171. A resolve in relation to aggressions upon the northeast frontier of the State, February 18, 1828.

the Maine Legislature, accompanied him. Their mission was to gather papers to support the American position. Preble also had a secondary mission that was to obtain a copy of the transcript of Baker's trial. This development was a surprise to Odell as it was not part of Preble's original mandate but came as a supplemental request. National and state interests were clearly intertwined. Sir Howard Douglas was recalled to help prepare the British position. Both sides were now waiting as the focus turned to the arbitration process. King William would not reach a decision until three years later in 1831.<sup>106</sup>

Both the British and Americans claimed that they had not exercised any new acts of jurisdiction and the status quo had not changed since the Treaty of Ghent was signed in 1814. However, the truth was somewhat different. Rich stands of valuable white pine notwithstanding, the British priority was on securing the all-weather line of communication from the Bay of Fundy to Quebec City that ran through the disputed territory along the St. John and Madawaska Rivers. In order to gain this security, they gave land grants to military settlers along the portage road from Lake Temiscouata to the St. Lawrence River during the closing months of the War of 1812. They also formed a military settlement along the St. John River between Woodstock and Grand Falls.<sup>107</sup> In order to improve the communications

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<sup>106</sup> TNA. CO 188/38. Sir Howard Douglas. Boundary Line Correspondence. p. 175. Douglas to Huskisson, July 7, 1828. PANB. RS 13, 2/20. Correspondence with Wm. P. Preble. Odell to Preble, July 8, 1828. Carroll. Good and Wise Measure. pp. 155-157 and 169.

<sup>107</sup> PANB. RS 637. Surveyor General. 7.r.6.a. On June 20 1819, Geo. Shore tasked James A. MacLauchlan, Deputy Surveyor, to survey lots for the Royal West Indies Rangers and to then submit a report of the status of the military settlement. TNA. MFQ 1/775. In 1814, Joseph Bouchette surveyed grants for the settlement of members of the 10<sup>th</sup> Royal Veterans Battalion on the River St. Francis where the portage road crossed it and on the Madawaska River. RS 558/A/2a. Military Correspondence and Papers – 1806, 1814-1849. Letter of May 7, 1817 from William H. Hailes, the

route, the New Brunswick government pressed forward with building “the Great Road of Communication to Canada”.<sup>108</sup> Additionally, the Madawaska settlement enlarged the British presence in the area as it continued to thrive and expand. Given its understanding of the agreement between Great Britain and the United States concerning the exercise of jurisdiction within the disputed territory, New Brunswick extended its jurisdiction to include the settlement that was occurring along the Aroostook River commencing in the early 1820s. Not to be outdone by Maine’s petitions to Washington, the Council and House of Assembly of New Brunswick petitioned the King in 1826 and asked him to keep the Madawaska and Aroostook watersheds within New Brunswick.<sup>109</sup>

One act of jurisdiction may have backfired on the New Brunswick officials. Early in 1827, the New Brunswick officials were growing increasingly concerned about illegal timber cutting on the Restook [Aroostook] River<sup>110</sup> and in the Madawaska settlement. It was decided to take legal action against the illegal settlers, many of whom were American citizens, who were responsible. The solution was to charge them with trespass and intrusion on Crown lands. This was also in keeping with the understanding with the American government that both sides would strive to keep the disputed territory in the same state that it was in when

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Colonial Administrator, to the Earl of Bathurst reporting the disbandment of NB Regt and that the President and Council have directed a tract of land between Presqu’Ile and Great Falls be used. If well settled, it “will be of great consequence to both provinces in keeping the communication open between them”.

<sup>108</sup> PANB. RS 637, 7r6c. Accounts. Receipt of J.B. Rainsford for wages on the Great Road of Communication to Canada for June to October 1826, dated January 8, 1827.

<sup>109</sup> TNA. CO 188/33. Sir Howard Douglas Letterbook, 1826. pp. 31-36. Petition to the King from the Council and House of Assembly of New Brunswick. 1 March 1826.

<sup>110</sup> The Americans tended to refer to the river as the Restook while the British used Aroostook. Both spellings are equally appropriate to the period and were used interchangeably.

the Treaty of Ghent was signed in 1814, that is no settlers were to be allowed above the Madawaska settlement or on the Aroostook River. Subpoenas to this effect were issued for at least John Baker and John Harford.<sup>111</sup> These acts hearken back to John Quincy Adams' advice of 1818 to consider them to be squatters and to deal with them accordingly. Baker had a strong desire to own his land and he was willing to support either the British or American sides, depending on who would grant him land. Word of this legal process that would have deprived him of his land may have given him a sense of hopelessness and motivated him to think that declaring a quasi-republic was his only course of action that would secure his land for him. Upon being found guilty at his trial in May 1828 for sedition, etc., the lesser charges of trespass and riot were dropped for Baker and his associates. Legal proceedings against the other illegal settlers in both the Madawaska settlement and along the Aroostook River appear to have been dropped. Thus it appears that part of Daveis' report was correct. The British were either planning to force the American settlers out of the disputed territory by charging them with trespass or at least teach them a lesson in civil obedience.

For their part, Maine was pushing the settlement frontier into the northeastern section of the state. Houlton had been established across the border from Woodstock in 1807 when the District of Maine was still part of Massachusetts. This area was just below the southern border of the disputed territory. Access to the settlement was difficult as there were no roads to it through the United States and the

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<sup>111</sup> Van Buren. Maine Boundary. pp. 63 and 70. Senate Doc. No. 130. Subpoena for John Harford dated 12 May 1827 and John Baker dated September 17, 1827, both for trespass and intrusion.

usual and easiest route was through New Brunswick, along the St. John River to Woodstock and then overland to Houlton.<sup>112</sup> In the summer of 1828, the American government established a military post at Houlton, called Hancock Barracks. The garrison consisted of four companies of the 2<sup>nd</sup> United States Infantry. The soldiers also built a military road that linked Houlton to Bangor.<sup>113</sup> The post served several purposes. It was a visible demonstration of support for Maine by the Federal government and also provided a measure of the protection that Maine had been requesting. It paralleled the British occupation of the fringes of the disputed territory. However, the British posts at Presqu'Isle and Grand Falls had recently been abandoned. Hancock Barracks could also be used as a listening post to keep the Federal government aware of developments along the frontier. Given Maine's propensity for taking unilateral action in matters relating to foreign affairs, this was probably a wise precaution.

Maine was also building interior roads and laying out settlement lots within the disputed territory. These roads would eventually give access to the Plymouth and Easton grants that had been made along the Aroostook River by Massachusetts and surveyed in 1806 or 1807.<sup>114</sup> In October of 1826, surveyors hired by Maine and Massachusetts were on the Aroostook River and were reportedly laying out lots to

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<sup>112</sup> Day, Clarence A. Aroostook: The First Fifty Years. Northern Maine Regional Planning Commission, 1989. pp. 29 to 30. The Wormwood family travelled from Old Town, Maine to Houlton in September 1813 over the Eel River portage route to Meductic and then up the St. John River to Woodstock where they went by wagon to Houlton. The normal route by ship to Saint John and then up the St. John River was not feasible because commercial shipping was disrupted by the War of 1812.

<sup>113</sup> Scott. Ties of Common Blood. pp. 68 – 70.

<sup>114</sup> Van Buren. Maine Boundary. p. 176. Senate Doc. No. 171. Report of C.S. Daveis, January 31, 1828.

within five miles of the St. John River. When questioned by a local resident, the surveyor who was Mr. Norris stated that Maine would hold this district of the country by some measures “even at the point of the Bayonet”. James A. MacLauchlan, a Deputy Commissioner of Crown Lands, visited the area at the request of Provincial Secretary, William Franklin Odell. He discovered that 65 townships were being surveyed and that it was estimated 40 to 50 American families would settle on them within the next year. Four of these families were expected on the Aroostook. Another American surveyor, General Joel Wellington, was marking out a road from the Penobscot settlements to Fish River. He said that the road would be open in a year.<sup>115</sup> This road was the precursor to Route 11 that runs from the Penobscot River to Fort Kent, on the Fish River, via Masardis. Then, during the early winter of 1827, the American settlers on the Aroostook River were cutting out a winter road to Houlton in order to avoid the British settlements on the St. John River where, according to their accounts, they were subject to harassment by the British. Building roads to give access to the disputed territory through American territory would become a priority for Maine during the 1830s.

A comment by Charles Vaughan, the British Minister in Washington, perhaps best sums up the situation. In 1827, he wrote in a letter to the Earl of Dudley, “As the population increases upon the American Frontier, and in proportion to the difficulty experienced by the General Government in controlling the conduct of the Governor and Legislature of the State of Maine, the remonstrances about

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<sup>115</sup> TNA. CO 188/33. Sir Howard Douglas Letterbook, 1826. pp. 134-138. Depositions by Daniel Hicky and George Thibodo, both dated October 18, 1826, and p. 142. MacLauchlan to Odell, October 20, 1826.

encroachments on both sides become more difficult to manage each year”.<sup>116</sup> It was clear that as the population increased within the disputed territory, so too did the amount of friction that was being generated between the governments of Maine and New Brunswick. Part of the “normal” friction related to the cutting of illegal or “trespass” timber. Complaints by the Land Agents of Maine and Massachusetts were an annual occurrence. For example, in late 1828, Geo. W. Coffin, the Land Agent for Massachusetts, complained about the cutting of illegal timber and the erection of sawmills on the Aroostook and Fish Rivers. In a letter to Vaughan, Clay warned that continued trespass of this nature was likely to cause Maine to respond, the result of which would be “immediate and disagreeable collision”. On behalf of the President, Clay demanded that the British government take action to curb this trespass. He reminded Vaughan that the American government had suspended work on the road through Maine to the Fish River after the British had protested about it.<sup>117</sup>

This complaint led Sir Howard Douglas to take two important steps in 1829 that demonstrated his willingness to deal with this problem. In his reply to Clay’s letter, Douglas advised that he was taking firm action to prevent the cutting of trespass timber in the disputed territory. He gave assurances that he would prosecute seizures of timber to “condemnation in the supreme court” and that the “proceeds of such sales [would] be held in trust”. Thus the first step was the

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<sup>116</sup> TNA. CO 188/36. New Brunswick, 1827. Public Works and Offices. P. 134. Vaughan to the Earl of Dudley, November 13, 1827.

<sup>117</sup> Van Buren. Maine Boundary. pp. 11-12. [House] Doc. No. 126. Clay to Vaughan dated January 9, 1829.



establishment of the Disputed Territory Fund. This fund would hold in trust all revenues gained from the sale of seized trespass timber or from the fines levied on it. The plan was to divide it proportionally between Maine, Massachusetts and New Brunswick once the boundary had been determined. He also stated that a magistrate, James A. MacLauchlan, would be sent immediately to the area to investigate Coffin's complaints and that he would remain in the area to enforce Douglas's instructions to seize any illegal timber coming out of the disputed territory. This was his second step, the appointment of MacLauchlan as the Warden of the Disputed Territory. MacLauchlan would endeavour to prevent the illegal cutting of timber and, if not successful, would seize it. Once seized, the timber could be sold or, upon payment of a fine, redeemed by the cutters.<sup>118</sup>

In the game of "tit for tat", Douglas launched a counter-complaint. He had learned that the American government was planning to extend the military road from Houlton to Mars Hill and to establish a military post there. This information was duly passed to Van Buren, the new American Secretary of State, via Vaughan. Vaughan, for his part, was concerned that this road might be the first step in an American attempt to occupy the disputed territory by force. In his reply, Van Buren stated that they would not pursue building this road as "proof of the spirit of amity,

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<sup>118</sup> Van Buren. Maine Boundary. p. 13. [House] Doc. No. 126. Douglas to Vaughan, February 11, 1829. PANB. RS 663 E.1.a. Correspondence, Commissioner of Crown Lands, 1809-1836. Baillie to Sir Howard Douglas dated 5 February 1829 and Baillie to MacLauchlan dated 13 February 1829 relates the details of MacLauchlan's appointment. TNA. CO 188/39. 1829. p. 211. A letter from the War Office to the Colonial Office dated August 31, 1829 discusses MacLauchlan's appointment as an "agent or Warden in charge of the Territory now in dispute between Great Britain and the United States (in New Brunswick) to prevent Trespasses...". MacLauchlan was concerned that this appointment might affect his half-pay as a retired military officer. It would appear that it did not.

forbearance and conciliation” between the two nations.<sup>119</sup> What is clear from these complaints and counter-complaints is that both governments were concerned about preventing any actions that might lead to “collision” or conflict in the disputed territory while the boundary arbitration was ongoing. It is also clear that neither the Maine nor the Massachusetts governments could control the cutting of illegal timber in the disputed territory and that they, and the Federal government, looked to Great Britain and New Brunswick to control it and, as a consequence, exercise jurisdiction there.

The next act of American jurisdiction in the disputed territory occurred almost without incident. The next United States census was conducted in 1830. In June, John Webber, a Deputy United States Marshall visited the area to conduct the census of the Madawaska settlement and the Aroostook River. Not surprisingly, John Baker accompanied him. A New Brunswick magistrate, presumably MacLauchlan, challenged him and requested him to cease the census. It appears that he did so willingly and left the area. Perhaps he was aware of the pending arbitration and did not wish to spark an incident.<sup>120</sup>

The Anglo-American agreement concerning jurisdiction had survived its first tests. The Achilles’ heel of the agreement was that it had not been formalized.

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<sup>119</sup> Van Buren. Maine Boundary. pp. 16 and 18. [House] Doc. No. 126. Vaughan to Van Buren, April 10 1829 and Van Buren to Vaughan, May 11, 1829.

<sup>120</sup> Bourne, Kenneth and D. Cameron Watt, General Editors. British Documents on Foreign Affairs: Reports and Papers from the Foreign Office Confidential Print. Part I. From the Mid-Nineteenth Century to the First World War. Series C. North America, 1837-1914, Volume 1, McLeod and Maine, 1837-1842. Bethesda, MD: University Publications of America, 1986. (BDFA, Pt. 1, Series C, Vol. 1)Doc. 32. p. 56. Based on an email from Dr. Chip Gagnon dated January 6, 2009, Webber’s census is incomplete when compared to Deane and Kavanagh’s of the following year. This tends to confirm that he broke it off early when requested to do so by the British magistrate.

Instead, it was more of an understanding that could be interpreted in many ways, depending on how it best served the interests of the interpreter. Great Britain continued to exercise jurisdiction as if the disputed territory was part of New Brunswick, instead of being an area administered in trust pending the resolution of the boundary dispute. Barrell's report to President Adams did not substantially challenge the British interpretation of the agreement. For its part, Maine was only too ready to challenge the agreement. While Barrell absolved Maine of any part in the disturbances in the Madawaska settlement, Maine vociferously supported the actions by Baker and associates. Daveis' report certainly justified their actions. The fact that Maine later reimbursed Baker for expenses relating to the 1827 incident only reinforced the idea that Baker had acted on direction from Maine.<sup>121</sup> In his annual message for 1828, the Governor informed the Senate and Legislature of Maine that, in the Baker affair, he saw "the intention of the government of New Brunswick to extend its jurisdiction and to confirm it, if possible over the whole disputed territory".<sup>122</sup> It was clear that Maine did not see the agreement in the same light that the United States and Great Britain did. This divergence of interpretation would lead to friction at both the local and international levels during the next decade.

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<sup>121</sup> Fulton, S.W.. The Life of Sir Howard Douglas. London: John Murray, Albemarle Street, 1863. p. 272. Fulton indicates that Sir Howard Douglas believed that Maine had sent in filibusters, e.g. Baker, to cause trouble in the Madawaska settlement. Maine State Archives. Executive Council Reports. Box 39 #39. Warrant in favour of John Baker for costs in his report on aggressions on the Northeastern Boundary. By a Resolve dated February 18, 1828, Maine decided to pay Baker \$40 for the cost of a visit to Portland to report on British aggressions. The warrant was approved for payment on November 18, 1831.

<sup>122</sup> Maine State Archives. 1828 GY 52.5. Governors Message for 1828. p. 17.

### **The King of the Netherlands' Arbitration and Troubles at Madawaska.**

The arbitration of the King of the Netherlands was announced on 10 January 1831. Instead of upholding either the British or American claim, King William gave a compromise decision, thus fulfilling Maine's prediction of the outcome. For the Disputed territory, his arbitration was a boundary line that ran north from the Monument at the source of the St. Croix River. From the point where the line reached the St. John River, it would follow the course of the river westwards to the St. Francis River and then up it to the watershed. From there, it would run in a westerly direction. Of the 12,027 square miles in dispute, 7,908 would be given to the United States (Maine) and 4,119 to Great Britain (New Brunswick and Quebec). However, while receiving less land, Great Britain would retain the vital land communication route between New Brunswick and Quebec. Judge William Preble, the Minister of the United States at The Hague, sent word of the decision to the United States government and to Maine. He also exceeded his mandate in The Hague by immediately protesting the award. Preble, who was a firm supporter of Maine's claim, returned to the United States in July, arriving first in Maine where he met with state officials.<sup>123</sup>

Andrew Jackson, the American President, and Martin Van Buren, his Secretary of State, were concerned about the effect that this decision would have in Maine. They specifically asked in a letter to Governor Samuel E. Smith of Maine "that, while the matter is under deliberation, no steps may be taken by the State of

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<sup>123</sup> Carroll. *Good and Wise Measure*. pp. 177-180 and 186. Area Study Series. British Parliamentary Papers. United States of America. Vol. 11 Canadian Relations. Shannon, Ireland: Irish University Press, 1972. (BPP/USA/CR) p. 153. Van Buren to Smith, March 18, 1831.

Maine, with regard to the disputed territory, which might be calculated to interrupt or embarrass the action of the Executive Branch of this Government upon the subject".<sup>124</sup> However, this was a request that carried little weight with Maine. Although Jackson was inclined to accept the arbitration, he was advised by his cabinet to refer the matter to the Senate. Later Jackson wrote "I had determined to accept the award made by the King of the Netherlands regardless of the remonstrance by Judge Preble, but my whole cabinet remonstrated against my decision recommending me, as the senate was in session, to lay it before them. I yielded to this recommendation, but sincerely have I regretted it since".<sup>125</sup> After deliberations, the Senate voted to reject the arbitration decision. This was largely due to political pressure from Maine. Based on a report by a Joint Select Committee of the Legislature, Maine's position was "the United States will not consider themselves bound on any principle whatever to adopt it [the arbitration]. And, further, should the United States adopt the document as a decision, it will be in violation of the constitutional rights of the State of Maine, which she cannot yield".<sup>126</sup>

These deliberations took time and it was not until July 21, 1832 that the Secretary of State, Edward Livingston, informed Charles Bankhead, the British charge d'affaires, that the United States would not accept King William's arbitration. This was based on the decision of the Senate, which also recommended

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<sup>124</sup> BPP/USA/CR, p. 54. Van Buren to Smith, March 18, 1831.

<sup>125</sup> Bassett, John Spence, ed. Correspondence of Andrew Jackson, Vol. VI, 1839-1845. (Washington, DC: Carnegie Institute of Washington, 1933) New York: Kraus Reprint Co, 1969. p. 162. Letter from Jackson to Francis P. Blair dated August 7, 1842.

<sup>126</sup> BPP/USA/CR, pp. 154-160. Report of the Joint Select Committee of the Legislature [of Maine], dated March 30, 1831.

new boundary negotiations be opened. It was clear that state's rights were the stumbling block as Maine "controverts [or denies] the constitutional power of the United States to circumscribe its limits without its assent". Perhaps in order to generate some bargaining power with Maine, Livingston also suggested including "the right of navigation of the River St. John" in any future negotiations.<sup>127</sup> A lengthy exchange of letters followed as the British and American governments tried to establish the guidelines for a new joint boundary commission. The British were not willing to link navigation of the St. John River to the boundary discussions.<sup>128</sup>

In 1834, Louis McLane, the Secretary of State, proposed that they should either find the Treaty line of 1783 or discard it and adopt "a new and conventional line, mutually convenient to both parties".<sup>129</sup> While this idea might have been acceptable to the British, it appears that domestic political pressure did not allow it to progress in the United States. In 1835, John Forsyth, the Secretary of State, acknowledged that the President did not have the same freedom of action that the British government did as "the Federal Government cannot alienate any portion of a territory of a state without its consent".<sup>130</sup> Later in the year, the British replied that, based on the American decision, Great Britain was withdrawing its consent to accept the King of the Netherlands arbitration. Then, after referring to the deadlock over the 1783 Treaty line, Bankhead proposed that the fairest way would be to divide the territory in equal proportions between the two countries. The St. John River would

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<sup>127</sup> Van Buren. Maine Boundary. pp. 196-197. Senate Doc. No. 414. Livingston to Bankhead, July 21, 1832.

<sup>128</sup> Ibid. p. 201. Senate Doc. No. 414. Vaughan to Livingston, April 14, 1833.

<sup>129</sup> Ibid. pp. 232-233. Senate Doc. No. 414. McLane to Vaughan, March 21, 1834.

<sup>130</sup> Ibid. p. 240. Senate Doc. No. 414. Forsyth to Vaughan, April 28, 1835.

be the dividing line from where the line north from the Monument intersected it to its southern most source.<sup>131</sup> Forsyth offered to submit this proposal to Maine.<sup>132</sup> It would appear that Maine also stopped this initiative.

Throughout this exchange of letters, it is clear that both the United States and British governments were agreeable to a compromise solution. Only Maine's resistance, and the crucial use of the issue of state's rights, prevented this from happening. The creation of another joint boundary commission continued to be delayed as both countries sparred over the terms of reference of any future commission. In the end, a new joint boundary commission was not formed. Both Great Britain and the United States commissioned independent boundary surveys, each of which supported the claims of their respective countries. Maine also conducted a boundary survey that, not surprisingly, supported Maine's claims. The sequence of surveys was Maine, Great Britain and the United States and, not surprisingly, each survey report tried to refute the findings of the previous one.<sup>133</sup> This lack of agreement helped to pave the way for the negotiated settlement by Lord Ashburton and Daniel Webster in 1842.

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<sup>131</sup> *Ibid.* p. 252. Senate Doc. No. 414. Bankhead to Forsyth, December 28, 1835.

<sup>132</sup> *Ibid.* pp. 254. Senate Doc. No. 414. Forsyth to Bankhead, February 29, 1836.

<sup>133</sup> McEwen, Alec, ed. In Search of the Highlands: Mapping the Canada-Maine Boundary, 1839. Fredericton, Acadiensis Press, 1988. This is a reprint of the Journals of G.W. Featherstonhaugh and R.Z. Mudge who conducted the British survey in the fall of 1839. PANB. RS 344/B/5 Harvey letterbook 4 May 1839 to 21 April 1841. Harvey to MacLauchlan, November 4, 1840. An American surveying party under the command of Major James D. Graham conducted the U.S. government survey in the fall of 1840. This party was operating with the knowledge of the New Brunswick government. Carroll, Good and Wise Measure. pp. 222-223 and 234-238. Maine appointed three commissioners, including John G. Deane, to conduct the Maine survey in the fall of 1838. They, of course, found evidence that fully supported Maine's claim to all of the Disputed Territory.

While the diplomatic niceties were being observed between the respective national governments, Maine tried to force the issue through a series of attempts to exercise jurisdiction within the disputed territory. Following the receipt of Preble's news of the results of the arbitration by the King of the Netherlands, the Maine Legislature passed an Act on March 15, 1831 that incorporated the Madawaska settlement as a town within the County of Penobscot.<sup>134</sup> As a result of this, Walter Powers of Madawaska was authorized to call a meeting on 20 August 1831 for the purpose of electing town officials. Ten American settlers and about 20 French ones attended the meeting but not all voted as two British officials, Leonard Coombes and Francis Rice, were present. They warned the settlers against participating in the elections, as they were illegal. Eight American citizens were elected to the town offices. Another meeting was held on 12 September to elect a representative to the Maine State Legislature. This time, between 50 and 60 residents were present. Again, Francis Rice attended the meeting and protested against the election on behalf of the British authorities. Peter Lizette, a New Brunswick militia officer, was elected but, on reflection, later declined the honour. John Baker played an active role in both meetings. In the election for representative to the Maine Legislature, 21 votes were cast for Lizette and five for Baker.<sup>135</sup>

These two meetings came quickly on the heels of another attempt by Maine to exercise jurisdiction in the disputed territory. In a Resolve approved on March 31, 1831, Maine decided to conduct its own census of the settlers in the disputed

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<sup>134</sup> Burrage. Maine in the Northeastern Boundary Controversy. p. 175.

<sup>135</sup> BPP/USA/CR. pp. 165-167. Depositions by L.R. Coombes dated 24 September 1831 and Francis Rice dated 22 September 1831.



territory with a view to “quieting the settlers in their possessions”. John E. Dean and Edward Kavanagh, two staunch supporters of Maine’s claim to the area, were appointed to the task.<sup>136</sup> They conducted their census between 24 July and 7 August. In addition to collecting information, they also threatened the residents of the Madawaska settlement with the loss of their land if they did not declare themselves to be citizens of Maine. If they did so declare, then they would be confirmed in their existing grants or be given 100 acres of land for free, less a five-dollar survey fee.<sup>137</sup> Their presence quickly became known in Fredericton. Warden MacLauchlan caught up with them on 3 August and challenged them about their mission. For some reason, perhaps to avoid escalating any tensions following the news of the arbitration by the King of the Netherlands, MacLauchlan did not force them to cancel their census but only accompanied them during their remaining time in the area. Deane and Kavanagh left from John Baker’s home on 9 August and proceeded to the Aroostook River, via the Fish River, where they arrived on 12 August. Following their survey of the settlers along the Aroostook River, they returned to Maine by descending the St. John River to Woodstock and then proceeding to Houlton.<sup>138</sup>

William Black was the civilian administrator of New Brunswick during the absence of Sir Howard Douglas and this may account for why Dean and Kavanagh

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<sup>136</sup> *Ibid.* p. 162. Resolve of the State of Maine dated March 31, 1831 and Appointment of Dean and Kavanagh dated April 2, 1831.

<sup>137</sup> *Ibid.* p. 165. Deposition of Peter Lizette dated 23 September 1831.

<sup>138</sup> Raymond, W.O., ed. "Report by Messrs. Deane and Kavanagh". Collections of the New Brunswick Historical Society. (St.John, N.B.) No. 9 (1914), pp. 386-462. (UNB HIL FC2461 .N494a v.1 1894-no.18 1963)

were not dealt with in a forceful manner. This changed on 8 September 1831 when Major General Sir Archibald Campbell became the new Lieutenant Governor.<sup>139</sup> He took firm action to deal with Maine's incursions into the disputed territory. The events were reported to Charles Bankhead in Washington who relayed the report, with a strong note of protest, to Edward Livingston, the Secretary of State.<sup>140</sup> At about the same time, Campbell proceeded to Madawaska with a small party that included Warden MacLauchlan, Charles Peters the Attorney General and Edward Winslow Miller the High Sheriff of the Country of York. He arrived there on 23 September, organized a posse led by Captain Leonard Coombes, and then began to arrest the American and French settlers who had participated in the meetings. Four Americans – Barnabas Hannawell, Daniel Savage, Jesse Wheelock and Daniel Bean – were apprehended and sent to Fredericton for trial. Their crimes were disturbing the peace, attempting to “estrangle the French inhabitants from their allegiance [to the crown] and trying to “transfer the possession of this district of the province [to Maine]”.<sup>141</sup> The other Americans, who were involved, including John Baker, escaped to the woods. Baker proceeded to Portland, Maine where he swore under oath to a colourful and dramatic statement about the arrests and his escape. About 30 French settlers were also arrested but were released on bail.<sup>142</sup>

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<sup>139</sup> Buckner, Phillip. “Sir Archibald Campbell”. Dictionary of Canadian Biography. Vol. VII (1836-1850). Toronto: University of Toronto Press, 1988. pp. 139-141.

<sup>140</sup> Van Buren. Maine Boundary. p. 23. House Doc. No. 126. Bankhead to Livingston dated October 1, 1831.

<sup>141</sup> BPP/USA/CR. p. 164. Peters to Campbell dated September 24, 1831 and October 2, 1831. UNB. LG Despatches Received Vol. XXI, 1840. Statement by Leonard Coombes dated 1 May 1840

<sup>142</sup> Collins, Rev. Charles W. The Acadians of Madawaska, Maine. Boston: Thomas A. Whalen & Co., 1902. pp. 43-46. Transcriptions of the deposition of John Baker dated 12 October 1831 and a letter by

On the diplomatic front, Governor Smith of Maine tried to play down the events by saying that, while Madawaska had been incorporated, there was never any intent to hold elections and upset the status quo. The elections were the act of over enthusiastic local residents. The Federal Government accepted this explanation and, as nothing had come of the elections, asked the British to release the prisoners. Secretary of State Livingston reiterated the American government's position that it wanted "to avoid any change in the existing state of things" in the disputed territory and that it had "efficaciously expressed [this desire] to the executive of the State of Maine".<sup>143</sup> The British chose to see this as "a total disavowal" of Maine's activities by the American government. The fines and prison sentences of the four Americans were remitted and no actions were taken against the French inhabitants.<sup>144</sup> Maine later reimbursed the Americans for the losses, presumably of income, that they had suffered.<sup>145</sup> While the American government adopted a conciliatory tone, Maine did not. In a document dated November 9, 1831, the Maine government denied any notion of a *status quo* arrangement between the governments of the United States and Great Britain. It again asserted its claim that the disputed territory was part of Maine and recommended warning the state militia to hold itself in readiness "to protect our territory from invasion and our citizens from capture". However, they

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Jesse Wheelock and Daniel Savage dated o/a 30 September 1831, as quoted from Resolves of Maine, 1829-1835, pp. 473-496.

<sup>143</sup> BPP/USA/CR, p. 168. Livingston to Bankhead dated October 17, 1831.

<sup>144</sup> Ibid. p. 175. Bankhead to Livingston dated November 25, 1831.

<sup>145</sup> Maine State Archives. Executive Council Reports. Box 41 #39. In Council March 9, 1832, Maine decided to pay John Baker \$650.00 for costs incurred by him. 833. Box 45 #42. Warrant dated March 5, 1833 in favour of Daniel Savage and others on account of their arrest and imprisonment in Fredericton, NB for organizing the town of Madawaska, ME.. Maine paid Daniel Savage \$400, Jesse Wheelock \$200, Barnaby Hunnewell \$125, and Daniel Beau \$50 "for losses sustained by them on account of their arrest and imprisonment" by the British.

did acknowledge that only the General Government had the authority to deal with Great Britain and that Maine “did not deem it expedient, at this time, to recommend measures which might lead to collision with the British authorities”.<sup>146</sup>

Maine had clearly shown its frustration with the diplomatic process by conducting two elections and sponsoring the Dean and Kavanagh census. It had also mustered its political strength to pressure the United States Congress to reject the arbitration by the King of the Netherlands. Throughout this, the Anglo-American agreement on jurisdiction had held up despite the strong pressures that it was subjected to. This was probably because both nations realized that the consequences of a broken agreement could have been quite serious, possibly even leading to war. This was certainly the case only eight years later. It is also possible that Maine’s leaders had realized that they had pushed too far and too hard. This may be why Governor Smith had distanced himself from the elections. According to Burrage, Smith was both vilified for this action and portrayed as a wise leader who had made his point and then drawn back to allow the national government to carry the cause forward.<sup>147</sup> The actions by his successor give credence to the latter scenario. In his message to both branches of the Legislature in 1834, Governor Dunlap stated that Maine was justified in its position and that he was confident that the United States government was determined “to submit to nothing that is wrong” as they continued the boundary negotiations. Two years later, he stated that, while no progress had been made, “It may with confidence be expected, that the good understanding now

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<sup>146</sup> BPP/USA/CR. pp. 172-173. State of Maine, In Council, November 7, 1831.

<sup>147</sup> Burrage. Maine. pp. 182-185.

existing between the United States and Great Britain, alike honourable to both nations will lead to such an adjustment of our border difficulties, as will receive the satisfaction of the people of this State".<sup>148</sup> With these expressions of confidence and good will, a period of relative calm descended on the disputed territory for a period of six years.

### **The Crises of 1837 and 1838.**

Following these events, matters in the disputed territory were relatively uneventful for the next six years. Maine and Massachusetts continued to push into the southern part of the disputed territory. Their Land Agents continued to issue timber-cutting permits in the area and to complain when the Warden seized the timber as having been cut illegally. At the same time, they were building a winter road north to the area of Masardis, Maine with the apparent intention of extending it to the St. John River. The British protested these activities to the American government that, in turn, asked for explanations from Maine and Massachusetts. Invariably, the reply was one of innocence that admitted no wrong on the part of the Land Agents but that instead complained of the actions of the British authorities.<sup>149</sup> While dissatisfied with these replies, the British were willing to accept the conciliatory approach of the American government and to overlook the actions of Maine and Massachusetts for, as long as the American government remained

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<sup>148</sup> Maine State Archives. 1834 GY 84-3. Governor's Communication Jan 4, 1834. Robert Dunlap. Maine State Library, Public Documents 1836. Jan 1836. Governor Dunlap message to both Branches of the Legislature. p. 15.

<sup>149</sup> BPP/USA/CR, p. 177. Vaughan to McLane dated October 20, 1833 and McLane to Vaughan dated December 21, 1833.

cooperative, the actions of the states would not be of consequence.<sup>150</sup> The British continued to exercise jurisdiction in the disputed territory. One important instance of this was the provision of relief to the inhabitants of the Madawaska settlement in 1834. Following a series of poor harvests, Justices Francis Rice and James A. MacLauchlan conducted a survey in the fall of 1833 to ascertain the degree of need. Relief supplies were provided to the inhabitants based on the recommendations in the report.<sup>151</sup> In a related move, Maine also contributed money for the relief of suffering there. It has been suggested that this relief might have been intended for the American inhabitants of the settlement.<sup>152</sup> The border tensions had receded to the point where John Baker, the inveterate supporter of Maine, accepted a New Brunswick appointment as a Commissioner of Highways in the Parish of Madawaska in 1837.<sup>153</sup>

Questions of jurisdiction greatly increased international tensions in 1837. The first concerned the proposed railway between the ice-free harbour of St. Andrews and Quebec City, whose port was closed to shipping by ice in the St. Lawrence River for upwards of six months each year. The St. Andrews and Quebec Railway was incorporated by an act of the New Brunswick Legislature in 1836 and

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<sup>150</sup> *Ibid.* p. 185. Vaughan to Palmerston dated March 12, 1834.

<sup>151</sup> PANB. RS 13. 3/a3. Madawaska County – distress in 1813, 1833 and 1874. Letter dated 30 November 1833.

<sup>152</sup> Maine State Archives. Executive Council Reports. 1834. Box 51 #18. Warrant in favour of Edward Williams for the relief of the suffering inhabitants of Madawaska October 22, 1834. Williams was paid \$101.00 “for money advanced by him for the relief of the suffering inhabitants of Madawaska” from the “contingency fund” as per an Act of March 10, 1834. In an Email from Béatrice Craig dated 9 July 2009, she suggested that it might have been only the American settlers that Maine provided relief to.

<sup>153</sup> UNB. Loyalist Collection. LGNB Despatches Received Vol. XXI, 1840. Statement by Francis Rice dated 4 May 1840.

survey work began on the route. The government of Lower Canada was equally supportive of this initiative. As this railroad would pass through the disputed territory, the project quickly came to the attention of the Maine government. Maine sent an emotional plea to the Federal Government to have the project stopped. Their rationale was that the railroad would be a violation of the agreement between the United States and Great Britain dating from 1833 that “until the matter [of the border] be brought to a final conclusion, both parties should refrain from the exercise of jurisdiction”. The President, Martin van Buren, agreed with Maine and Secretary of State Forsyth informed the British Ambassador, Henry Stephen Fox, that the American government considered the railway project to be “a most exceptionable departure from the principle of continuing to abstain ... from any extension of the exercise of jurisdiction within the disputed territory”. He urged Great Britain to “suspend any further movement in the execution of the proposed project”. The British government concurred and in August of 1837 informed the Americans that direction had been given to the governments of New Brunswick and Lower Canada to discontinue any work on the railroad project within the limits of the disputed territory. The railroad, which would have opened up northern Maine to commerce, became a casualty of the border controversy. The railroad would be built, slowly, up the line of the St. John River towards Quebec.<sup>154</sup>

The next series of events would try the patience of the new Lieutenant Governor, Major General Sir John Harvey, who had taken up his post on 1 June

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<sup>154</sup> Van Buren. Maine Boundary. pp. 353, 361, 377-378 and 380. House Doc. No. 31. Dunlap to Van Buren dated April 30, 1837, State of Maine, In House of Representatives dated February 2, 1837, Forsyth to Fox dated March 23, 1837 and Fox to Forsyth dated August 24, 1837.

1837. They were brought about by the United States government that, in December of 1836, had determined there were surplus funds in the United States Treasury and decided to return them to the various states.<sup>155</sup> Maine, in turn, resolved to distribute their share to its citizens based on a new census. Ebenezer S. Greely was appointed to conduct the census in the Madawaska settlement and started his work in May of 1837. As part of this, he told the inhabitants that they would receive “a sum of money not exceeding twelve shillings and sixpence per year, in each family” provided they declared themselves to be American citizens living in Maine. Once this became known, Justices Francis Rice and Leonard Coombes had Greely arrested on 29 May for illegally conducting the census and “troubling the peace of His Majesty’s subjects”.<sup>156</sup> Greely was sent to the Woodstock jail but the Sheriff there released him. Greely returned to Madawaska and recommenced his census. Warden MacLauchlan was sent to either persuade him to give up the census or to arrest him again. Greely refused to quit and was arrested on 7 June and conveyed to the York County Gaol in Fredericton.<sup>157</sup> As a courtesy, Sir John Harvey advised Governor Robert P. Dunlap of Maine of Greely’s arrest and offered to release him if Maine would restrain their officials from attempting to exercise authority in, and disturb the inhabitants of, the disputed territory. This olive branch was not accepted. Instead, Dunlap claimed that Greely was legally employed within the boundaries of Maine and that his arrest was an “outrage upon the National as well as the State rights”.

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<sup>155</sup> Scott, Ties of Common Blood, p. 98. Referenced President Andrew Jackson’s Eight Annual Message of December 5, 1836.

<sup>156</sup> BPP/USA/CR, p.214. Warrant for the arrest of Ebenezer Greely dated 29 May 1837.

<sup>157</sup> Ibid. p.210. MacLauchlan to Harvey dated June 10, 1837.



Dunlap demanded, in letters to President Van Buren and Secretary of State Forsyth, that they should arrange for Greely's immediate release.<sup>158</sup>

Van Buren's first response was to try to calm the situation by asking Dunlap for more information before taking any formal actions and, at the same time, to unofficially ask Fox to arrange for Greely's release.<sup>159</sup> Upon receiving further information from Dunlap, the American government made a formal request through A. Stevenson the American representative in London, to Viscount Palmerston, the British Secretary of State for Foreign Affairs. Stevenson requested the immediate release of Greely and urged that the border controversy be "speedily and amicably settled".<sup>160</sup> The British government decided that, in the interest of maintaining good relations, Greely should be released and this was done on August 8, 1837.<sup>161</sup> Greely returned to Maine and then came back to New Brunswick in order to complete his census. G.F. Street, the Solicitor General, met with Greely in Woodstock in early September. Greely was told to either cease his census or be arrested. His response was that, if he were arrested, Maine would send "another person to succeed him ... with sufficient force to protect and support him in the act".<sup>162</sup> He then returned to the Madawaska settlement, was arrested and taken to Fredericton. Harvey then wrote a strong letter to Dunlap in which he stated he would not "suffer any act of sovereignty or jurisdiction to be exercised by any foreign Power" in the disputed

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<sup>158</sup> Van Buren. Maine Boundary. pp. 364, 366 and 367. House Doc. No. 31. Harvey to Dunlap dated June 12, 1837, Dunlap to Van Buren dated June 19, 1837 and Dunlap to Forsyth dated July 3, 1837.

<sup>159</sup> Ibid. p. 367. House Doc. No. 31. Forsyth to Dunlap dated June 26, 1837.

<sup>160</sup> BPP/USA/CR. pp. 53-54. Stevenson to Palmerston dated August 10, 1837.

<sup>161</sup> Ibid. p. 64. Harvey to Lord Glenelg dated July 31 and August 8, 1837.

<sup>162</sup> Ibid. p.220. Street to Harvey dated September 5, 1837.

territory. He went on to say that he had the support of both the British and American government in this. Harvey was particularly concerned about Greely's threat of the use of force and appealed to Dunlap to take action to prevent any collision pending resolution of the boundary question. In a postscript, he informed Dunlap that he would have allowed the census had Dunlap requested permission to conduct it.<sup>163</sup>

Harvey was quite concerned about the possibility of Maine invading the disputed territory. On June 27<sup>th</sup>, Maine issued a Militia General Order that declared the state to have been invaded and a citizen arrested by the officials of New Brunswick. The order called on the militia to hold itself in readiness "to obey such orders as the security of our citizens and the honor of the State may require".<sup>164</sup> This was followed by rumours in late August of "an intended meeting of militia volunteers on the frontiers of Maine". Given this background and the general feeling of animosity in Maine, Harvey decided on a show of force to demonstrate his resolve. Two companies of the 43<sup>rd</sup> Regiment were sent to each of Woodstock and Grand Falls on 15 September. While they did not cross the line north from the Monument, they did close up to it. Harvey also paid a personal visit to Grand Falls. This demonstration had the desired effect for, in his letter of September 27<sup>th</sup> to Harvey, Dunlap, while re-emphasizing Maine's claim to all of the disputed territory, echoed the wish "that every occasion of collision or jealousy may be avoided". Then, in relation to Greely's census, Dunlap said that he was powerless to stop it as

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<sup>163</sup> *Ibid.* p.221. Harvey to Dunlap dated September 10, 1837.

<sup>164</sup> *Ibid.* pp.212-213. General Order dated June 27, 1837.

the Legislature and not the executive of the state had authorized it.<sup>165</sup> While this exchange of letters was happening, the appearance of a party of Americans on the St. John River above the Madawaska settlement created some excitement. It turned out that they were not soldiers but a group from Maine who were surveying the road from Masardis along the Fish River to the St. John. They did not remain in the area for long, presumably to avoid arrest.<sup>166</sup> After receiving Dunlap's letter of the 27<sup>th</sup>, Harvey informed him that the movement of the two companies of troops had been "a strictly defensive and precautionary measure" to "give aid and protection to the civil authorities" in case they encountered any "armed citizens of the state of Maine" who might try to exercise jurisdiction in the area. They had been recalled upon the receipt of Dunlap's letter.<sup>167</sup>

While Greely remained in the Fredericton jail, and letters concerning his imprisonment criss-crossed the Atlantic, the rebellions of 1837 broke out in the Canadas. Troop reinforcements were needed urgently and, as the St. Lawrence was closed due to ice, the only route for them to use was overland, along the Grand Communications Route. Because the route went through the disputed territory, Harvey was concerned about the American response to the troop movements, especially in light of the Greely crisis. In response to a letter from Harvey, Fox wrote to Forsyth advising him of the pending troop movements and the reason for it.

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<sup>165</sup> *Ibid.* pp.222-223. Dunlap to Harvey dated September 27, 1837.

<sup>166</sup> *Ibid.* p.223. MacLauchlan to Harvey dated October 8, 1837.

<sup>167</sup> *Ibid.* p.223. Harvey to Dunlap dated October 12, 1837.

Forsyth did not object and forwarded the same information to Dunlap.<sup>168</sup> This goodwill did not alter Maine's stance on the boundary issue. The new governor of Maine, Edward Kent, formed a joint select Committee to review the North Eastern Boundary question. This was in response to a joint British/American proposal to form a new joint Commission of Exploration and Survey to find the boundary line. The committee issued its report in early March 1838. Not surprisingly, it fully supported Maine's claim to all of the disputed territory and denounced Britain's exercise of jurisdiction including Greely's arrests. It also found that the British troop movements were "a palpable outrage on the sovereignty" of Maine and the United States.<sup>169</sup> Harvey was concerned that Greely's actions and the potential for conflict along the border may have been "intended as a diversion in favour of the Papineau party, by preventing reinforcement of troops being sent from Nova Scotia".<sup>170</sup> This was a valid concern as many American citizens along the border with British North America sympathised with the rebels and some gave them active support.<sup>171</sup> Fortunately, there was "not one single act of border inroad or encroachment" from Maine during this period. In light of this goodwill, Harvey, in response to private requests by the Governor and other politicians of Maine, released Greely in February of 1838.<sup>172</sup>

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<sup>168</sup> Van Buren. Maine Boundary. pp. 408-409. House Doc. No. 74. Fox to Forsyth dated November 28, 1837, Forsyth to Fox dated December 2, 1837 and Forsyth to Dunlap dated December 5, 1837.

<sup>169</sup> BPP/USA/CR. pp. 314-319. Report of the joint select Committee dated o/a March 1838.

<sup>170</sup> PANB. RS 344. Harvey to Glenelg dated 6 July 1837.

<sup>171</sup> Scott, Winfield. Memoirs of Lieut.-General Scott, LL.D. Vol. I. New York: Sheldon & company, 1864. p. 305.

<sup>172</sup> BPP/USA/CR. p.234. Harvey to Glenelg dated February 2, 1838.

During this period, it was clear that there was an understanding between the United States and Great Britain concerning the exercise of jurisdiction in the disputed territory. While each nation may have had a different interpretation of it, the understanding did exist. Essentially, neither country would attempt to extend their exercise of jurisdiction within the disputed territory. This was a convenient arrangement for the American government as they had not exercised any jurisdiction there and, by the British presence, law and order was being maintained. For the British, although it could be said that they did extend their area of jurisdiction as the Madawaska Settlement grew and expanded up the St. John River and settlement took place along the Aroostook River, this could be seen as a natural extension of the jurisdiction that had been existent since the late 18<sup>th</sup> century. However, the British were becoming increasingly strident in declaring their interpretation of the agreement. In his report dated January 1, 1839, Maine Land Agent E. L. Hamlin described an encounter earlier in 1838 between MacLauchlan and the Maine Surveyor-General who was laying out lots along the Aroostook River. MacLauchlan, in protesting against the survey, stated that “the British Government claim[ed] to exercise jurisdiction over the whole Northern part of the State, by virtue of ‘existing arrangements subsisting between the British Government and that of the United States’”.<sup>173</sup>

The Maine politicians, of course, strongly disagreed with this arrangement and frequently denied its existence, except when they used it to their benefit in order to stop the construction of the St. Andrews and Quebec Railway. Maine was

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<sup>173</sup> Ibid. p. 396-398. Hamlin to the Governor of Maine dated January 1, 1839.

becoming increasingly frustrated and impatient with the slowness of the boundary discussions and with the growing perception that they might not receive the full extent of their professed claim under the terms of the 1783 Treaty of Paris.

Certainly declarations of exclusive jurisdiction by officials of the New Brunswick government, such as MacLauchlan contributed to this unease. Other events, such as the ongoing arguments about the cutting of trespass timber, the Greely arrests and the movement of troops through the disputed territory, only added to the friction. It was against this background that Maine precipitated what would be known as the “Aroostook War” and, as a consequence, forced the resolution of the boundary question.

#### **The Aroostook War of 1839.**

While there were many underlying reasons for this latest crisis, the ostensible one was the cutting of trespass timber. This was an ongoing concern for Maine and, in the fall of 1838, the land agents of Maine and Massachusetts hired George W. Buckmore to survey the situation. In his report, Buckmore described the large scale cutting of illegal timber that was being done. The two areas that were of the greatest concern to Maine were along the Aroostook and Fish Rivers.<sup>174</sup> It was estimated that \$100,000 worth of timber would be cut over the winter and, as it was trespass timber, no stumpage fees would be paid. Maine and Massachusetts would also not receive any revenue from the transportation and sale of this timber as it would be floated to market down the St. John River and exported from Saint John. This led the newly elected Governor John Fairfield to recommend to the Maine Legislature

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<sup>174</sup> Ibid. pp. 483 to 484. Buckmore to Hamlin dated January 22, 1839.

that action should be taken to prevent this from happening. The Legislature agreed and, on January 24, 1839, resolved that “the land agent ... employ forthwith sufficient force to arrest, detain and imprison all persons found trespassing on the territory of this state as bounded and established by the Treaty of 1783”.<sup>175</sup> This launched what has become known as the “Aroostook War”.<sup>176</sup>

The newly appointed Maine land agent, Rufus McIntire, accompanied by Sheriff Hastings Strickland and an armed posse of about 200 men moved quickly by road to the western end of the Aroostook River at Masardis. After their arrival, they began pushing down the Aroostook River and driving off the trespassers. The lumbermen attempted to resist the posse, but as it was armed with a brass six-pounder cannon, chose to retreat instead. There was an air of comic opera as the lumbermen captured McIntire and some of his party on the night of 12 February, while the posse captured Warden MacLauchlan and Captain Benjamin Tibbets on 16 February at Masardis. They were taken to Fredericton and Bangor respectively.<sup>177</sup> Meanwhile, Harvey had sent a letter to Fairfield in which he expressed his “utmost surprise and regret” about Maine’s unilateral actions. As this may lead to “border collision” or perhaps “immediate and active hostilities”, he called on Fairfield to withdraw his posse. Failing this, Harvey would use military force to protect the disputed territory. As a token of good will, he said that he had directed a boom to be

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<sup>175</sup> *Ibid.* pp. 382 – 383. Message from the Governor of Maine dated January 23, 1839 and Resolve relating to trespassers upon the public lands dated January 23, 1839 and approved by Governor Fairfield on January 24, 1839..

<sup>176</sup> The events of the Aroostook War will be discussed in more detail in Study 3 so only an outline will be provided here.

<sup>177</sup> BPP/USA/CR, p. 384. Message of the Governor of Maine dated February 15, 1839.

built across the mouth of the Aroostook River to stop and seize any illegal timber in the spring. Any funds received from the sale of seized timber would be placed in the disputed territory fund. A similar boom or booms would be placed on the Upper St. John River.<sup>178</sup> Fairfield's response was to reinforce the posse and to mobilize the state militia to support the land agent's posse.<sup>179</sup> Ten thousand militiamen were placed on alert. Soon afterwards, the posse took up a position along the Aroostook River, close to the line running north from Monument, that they named Fort Fairfield. There was a detachment sent to chase the lumbermen off the Fish River that entered the St. John River north of the Madawaska settlement.

Upon receipt of Harvey's notification of the incursion by Maine, Fox wrote to Forsyth on 23 February and asked that the General Government intervene by forcing Maine to withdraw its militia. He argued that "it is well known that all that part of the disputed territory is placed under the exclusive jurisdiction of Her Majesty's authority" in accordance with an agreement between the American and British governments pending the resolution of the boundary.<sup>180</sup> Because of the unsettled situation in the Canada's and along the northern American border due to the aftermath of the Rebellions of 1837 and 1838, Fox was "impressed with a sense of the more than usual importance of maintaining peace, if possible, on the border of New Brunswick and Maine".<sup>181</sup> In his reply, Forsyth indicated that he and the President supported Maine's actions. According to information received from

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<sup>178</sup> *Ibid.* p. 388. Harvey to Fairfield dated February 13, 1839.

<sup>179</sup> *Ibid.* pp. 385. Message of the Governor of Maine dated February 18, 1839.

<sup>180</sup> *Ibid.* p. 370. Fox to Forsyth dated February 23, 1839. It was first thought that it was the Maine militia and not a civil posse that had entered the Disputed Territory.

<sup>181</sup> *Ibid.* p. 368. Fox to Viscount Palmerston dated February 23, 1839.



Maine, it was a civil posse and not the militia that had entered the Aroostook River valley. They were only going to stop the cutting of trespass timber and then leave the area. As there was no plan for a military occupation, which the Federal government would have opposed, the British were over reacting.<sup>182</sup>

However, the key message was that the Federal government no longer agreed that the British should have exclusive jurisdiction of the disputed territory. Forsyth went further to say that the American government had protested against this assumption in the past and had asserted that the right of jurisdiction belonged to Maine and the United States. He ended by urging a resolution to the boundary question. The American government had clearly changed its position.<sup>183</sup> Or, perhaps, the differences in understanding between the two governments had not come into such sharp focus in the past. In either case, this caught Fox off guard. He protested this change of view in his reply to Forsyth dated February 25 and referred the matter to London.<sup>184</sup> Forsyth's position was validated three days later when both the Senate Committee of Foreign Relations and the House Committee on Foreign Relations reported that they could find no evidence "of any understanding, express or implied, much less of any 'explicit agreement' that gave the British exclusive jurisdiction over the disputed territory, pending a resolution of the boundary dispute".<sup>185</sup> This determination came as unsettling news to the British, who had – by

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<sup>182</sup> *Ibid.* pp. 374-376. Forsyth to Fox dated February 25, 1839.

<sup>183</sup> *Ibid.* pp. 374-376. Forsyth to Fox dated February 25, 1839.

<sup>184</sup> *Ibid.* p. 376. Fox to Forsyth dated February 25, 1839.

<sup>185</sup> *Ibid.* pp. 402-408. Resolution of the Senate dated February 28, 1839 and Report of the House of Representatives, n.d. but Burrage. Maine. p. 266 states it was the same day. The quote is from the Senate Resolution, p. 403.

mutual agreement – exercised jurisdiction in the disputed territory for the past 56 years.

Finding a solution to the boundary question took on a new sense of urgency. Resolving the crisis created by the Aroostook War was even more critical. By 29 February, Fox and Forsyth had worked out a compromise solution. While agreeing to disagree on the question of jurisdiction, they concluded that this would be a point of little importance once the boundary location was resolved and should not be allowed to cause a war. New Brunswick would not expel the armed force of Maine from the Aroostook Valley provided Maine voluntarily withdrew it. Any future, armed operations against trespassers would be coordinated with New Brunswick. While acknowledging that the agreement was “a large and generous concession to the pretensions of the people of Maine”, Fox recommend it to Harvey on the understanding that the American government would recommend it to Maine.<sup>186</sup> The agreement was later endorsed by the British government in the expectation that it would “have the desired effect of preventing any conflict” pending an agreement on the boundary.<sup>187</sup>

However, this agreement sidestepped the question of who would exercise jurisdiction in the future. This fact did not go unnoticed by Maine and it was one of the issues that Major General Winfield Scott had to resolve. He had been sent to Maine as Van Buren’s representative to persuade the Maine politicians to accept The

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<sup>186</sup> Ibid. pp. 377-378. Fox to Harvey dated February 27, 1839.

<sup>187</sup> Ibid. p. 409. Viscount Palmerston to Fox dated April 6, 1839.

Memorandum, as the Fox/Forsyth agreement was referred to.<sup>188</sup> In negotiations with Fairfield and Harvey, Scott proposed that Maine remove its militia but leave behind a small civil posse under the land agent to prevent illegal timber cutting. In addition, Maine would not “attempt to disturb by arms ...[New Brunswick] ... in the possession of the Madawaska Settlements” or to disrupt the communication route to Quebec. For its part, New Brunswick would leave Maine in “possession of another portion of the same territory”. The three parties signed this agreement between 21 and 25 March 1839.<sup>189</sup> Fox was pleased with this as it averted “honourably the risk of immediate collision on the Frontier” and it established “a certain practical line of demarcation within the disputed territory” that might form the “basis for a conventional line of frontier”.<sup>190</sup> Unfortunately, the risk of friction and perhaps collision had not been eliminated. Just as each party had a different understanding of the agreement between the United States and Great Britain concerning the exercise of jurisdiction, so was the agreement that ended the Aroostook War understood differently. The British view was that Maine would exercise jurisdiction within the Aroostook River valley and nowhere else within the disputed territory. However, the agreement did not specify exactly where Maine would exercise jurisdiction and Maine was quick to take a larger interpretation of the agreement.

Orders were issued for the discharge of the Maine militia on 25 March and New Brunswick began the same process on 27 March. A civil force was left on the Aroostook River under command of Acting Land Agent Jarvis and it began to

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<sup>188</sup> Scott, *Memoirs*, pp. 337-347.

<sup>189</sup> *Ibid.* pp. 431-434. Scott to Harvey dated March 21, 1839.

<sup>190</sup> *Ibid.* pp. 430-431. Fox to Viscount Palmerston dated April 20, 1839.

develop the site of Fort Fairfield by constructing a timber boom and two blockhouses.<sup>191</sup> The British garrison left the Madawaska settlement towards the end of March. Coinciding with this, Jarvis sent Captain Nye with a detachment of the posse to stop timber depredations on the Fish River. Nye first stopped at Soldier's Pond and then, finding no British resistance to his movement, continued on about four miles to the junction of the Fish and St. John Rivers, about 20 miles up stream from the Madawaska River. He began erecting a blockhouse that he called Fort Jarvis (later Fort Kent) and building a timber boom. This was in clear violation of the British understanding of the trilateral agreement that had ended the Aroostook War crisis. Harvey protested these actions to the American government through Fox, to General Scott and to McIntyre, who had resumed his post as the Maine Land Agent. All agreed with Harvey and McIntyre said that he would withdraw Nye. Based on these positive replies, Harvey took no action to remove Nye. But, as time passed, the Americans took no action to recall Nye and his party. Based on statements by McIntyre and other information, Harvey became concerned that Maine would challenge the definition of the Madawaska settlement. In his instruction to MacLauchlan, Harvey defined the Madawaska settlement, or settlements as it was also referred to, as extending from just above Grand Falls along both sides of the St. John River to the River St. Francis on the north bank and the Fish River on the south one. He also charged MacLauchlan with monitoring the

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<sup>191</sup> Aroostook War. Historical Sketch and Roster of Commissioned Officers and Enlisted Men Called into Service for the Protection of the Northeastern Frontier of Maine From February to May, 1839. Augusta, Me: n.p., 1904. pp. 17-19, Maine Militia Orders Numbers 28 and 29 dated March 25, 1839. New Brunswick Royal Gazette dated April 3, 1839. Scott. *Ties of Common Blood*. p. 254 cites a letter from Jarvis to Fairfield dated April 9, 1839.

activities of the posse and notifying him if there was any interference with the inhabitants of the Madawaska settlements.<sup>192</sup>

The Aroostook War was the turning point in the Maine/New Brunswick boundary controversy. Prior to this, both the United States and Great Britain seemed content to let the boundary negotiations continue at a slow pace. The British had control of the Grand Communications Route and so there was no sense of urgency. The United States government was able to placate Maine by continuing to conduct negotiations. Maine, for its part, appeared satisfied that it had forced the rejection of the King of the Netherlands' arbitration and simply monitored the boundary negotiations. All of this changed when Maine became alarmed about the forecasts that large amounts of trespass timber were going to be cut in the disputed territory during the winter of 1838-1839. By taking decisive and unilateral action to prevent this, Maine forced the American government to review and renegotiate that Anglo-American agreement about jurisdiction. The outcome of the Aroostook War crisis was that Maine gained control of the Aroostook Valley and then moved to take control of the Fish River Valley and the right bank of the St. John River above the Madawaska settlement. In retrospect, no one should have been surprised that Maine took this action. Both Governor Fairfield's message to the Senate and House of Representatives of Maine that resulted in the Resolve of January 24 and the despatch of the posse, and the Resolve of February 18 that called out the state militia, saw the

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<sup>192</sup> BPP/USA/CR, pp. 444-445. Harvey to MacLauchlan dated August 30, 1839.

posse and militia operating on the Fish River or the River St. John, “if practical”.<sup>193</sup>

Given the ineffective British response to the presence of the posse on the Fish River, this became practical and Maine gained jurisdictional control over the southern half of the disputed territory, less the portion of the Madawaska settlement on the right bank of the St. John River. The disputed territory had been partitioned.

#### **The Partitioning of the Disputed Territory to the Webster-Ashburton Treaty.**

The Maine posse at Fish River quickly established their jurisdiction along the St. John River above the Fish River. In May, Nye, backed by members of his armed posse, warned off MacLauchlan’s men as they tried to take away seized timber. Not surprisingly, Baker was working closely with Nye. This aggressive American presence caused the British to have renewed concerns about the security of the Grand Communications Route and of the Madawaska settlement.<sup>194</sup> During the height of the Aroostook War crisis, Harvey had indicated to Fox that he would act defensively and confine his actions “to the protection of the communication” between New Brunswick and Lower Canada.<sup>195</sup> This priority remained and by mid-summer, Harvey could report to the Marquis of Normanby that he and Sir John Colborne were in the process of improving the route and establishing a series of

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<sup>193</sup> *Ibid.* pp. 382-383 and 387-388. In the Message from the Governor of Maine to the Senate and House of Representatives dated January 23, 1839, Fairfield said “I would recommend that the land agent be instructed forthwith to proceed to the place of operations on the Aroostook, and also upon Fish River, if practicable”. This message was the basis for the Resolve of January 24, 1839 that launched the Land Agent and his posse. In the Resolve for the protection of public lands dated February 18, 1839, it called for a military force to be “stationed on the Aroostook River, west of the boundary line of the Treaty of 1783, and on the River St. John, if found practicable”.

<sup>194</sup> UNB. Loyalist Archives. LGNB. Despatches Received 1837-1845 (FC LPR .N4L5D4) Vol. XX, 1839. MacLauchlan to Capt Tyron dated May 11, 1839. Captain Tyron was Harvey’s aide-de-camp.

<sup>195</sup> BPP/USA//CR. p. 428. Harvey to Fox dated March, 6 1839.

posts along it to facilitate the movement of troops.<sup>196</sup> The plan included improving the outposts at Dégelis and at Cabano (Fort Ingall), both in present day Quebec. Colborne established a small garrison at Fort Ingall in June 1839.<sup>197</sup> Both nations were enhancing their presence within the disputed territory while, at the same time, protesting the other's actions. Tensions rose again following a half hearted raid by a group of New Brunswick lumbermen on Fort Fairfield during the night of 8/9 September 1839. As a precautionary move, the British reinforced the garrison at Fort Ingall with two companies of infantry.<sup>198</sup> In November 1839, Fox wrote to Forsyth about "the unauthorized acts of encroachment" by Maine as permanent posts were built at Fort Fairfield and Fort Jarvis, a road was being built towards Fish River and the land agent was surveying lots and selling land. In his reply, Forsyth justified Maine's activities and, in turn, protested the British actions in stationing troops and building barracks in the disputed territory.<sup>199</sup> More protests and counter-protests were exchanged but neither side ceased their activities. It appeared that Fox's prediction that this partitioning of the disputed territory could become the basis for the boundary might come to pass. This marked the start of the consolidation or garrison period.

There was more excitement in August of 1840 when Colonel Gorham Parks, a former United States Congressman from of Maine and a United States Marshall,

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<sup>196</sup> PANB. RS 344. Harvey to Normanby dated 25 July 1839. Colborne was the Commander-in-Chief of the military forces in the Canadas and Lord Normanby was the colonial secretary.

<sup>197</sup> Nova Scotia Archives and Record Management (NSARM). WO 17/1543 (1839).

<sup>198</sup> McEwen. *In Search of the Highlands*. p. 33. See Featherstonhaugh's Journal for 10 September 1839, and NSARM. WO 17/1543 (1839).

<sup>199</sup> BPP/USA/CR. pp 448-450 and 455-457. Fox to Forsyth dated November 2, 1839 and Forsyth to Fox dated December 24, 1839.

arrived in the Madawaska settlement to conduct the Sixth Census of the United States. Harvey sent MacLauchlan to protest the census but, as it was a Federal undertaking, did not stop Gorham's work.<sup>200</sup> However, the American presidential elections sparked the next significant crisis. A meeting was held at the Fort Jarvis blockhouse on 2 November to vote for the President and Vice President. According to Francis Rice, who attended in his capacity as a British official, there were about 100 persons present "principally Americans [and] ... a few French Canadians of the lower class". When Rice protested the legality of the meeting, Assistant Land Agent Stover Rines, who had replaced Nye, threatened to arrest him. Rice was removed from the meeting and roughly used by John Baker and other Americans who were present; however Rines prevented any harm coming to him. Rines also said that he would arrest any British officials who tried to exercise jurisdiction north of the Madawaska River.<sup>201</sup> This latest insult to a British official, and the American claim to exercise jurisdiction above the Madawaska River, pushed the patience of Harvey to the breaking point. In a flurry of letters to Lord Sydenham, the Governor General of British North America, Harvey first asked if the British would simply protest Maine's actions or would they take steps by moving in a military force "to give confidence and protection to the Queen's subjects, and support to the civil authorities". The next day, Harvey sent another letter expressing his concern about Maine attempting to take control of about one third of the population of the

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<sup>200</sup> TNA. CO 412/469. NB Letters 1840 (duplicate dispatches). MacLauchlan to N.J. Harvey, Private Secretary of Sir John Harvey, dated August 16, 1840.

<sup>201</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1. p. 100. Rice to MacLauchlan dated November 3, 1839.



Madawaska settlement and blocking the line of communication. He proposed building blockhouses opposite the Fish River and at the junction of the Madawaska and St. John Rivers. They would be garrisoned with an armed posse or police force similar to what Maine had done. This force, being non-military, would give no cause for complaint by Maine. Three days later, he sent another letter in which he decided that he did not want troops but a civil party or posse under the direction of the Warden and local magistrates.<sup>202</sup>

The British authorities had not been pleased with Harvey's handling of the American presence on the Fish River. In May of 1839, Harvey had considered sending a company of infantry to the Madawaska settlement to assert British authority, to provide support for the settlers and to prevent any interference with the mail courier.<sup>203</sup> This was not done because of the reassuring, but ineffectual, responses that Harvey had received when he protested this violation of the agreement to the American authorities. His inactivity allowed the posse to firmly establish itself at Fort Jarvis. Then, after Colborne reinforced the garrison at Fort Ingall in December of 1839, Fairfield sent Harvey a letter about this movement that was "so clearly in violation of the arrangement" that General Scott had negotiated. Harvey's reply had an apologetic tone in which he said that the movement of troops had "been made by authority superior to mine".<sup>204</sup> Harvey's superiors did not appreciate this revelation of a division in the British position. They also did not like

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<sup>202</sup> Ibid. pp. 102-104. Harvey to Sydenham dated November 13, November 14 and November 17, 1840.

<sup>203</sup> PANB. RS 344. Harvey to Normanby 26 May 1839.

<sup>204</sup> BPP/USA/CR. pp 457-458. Fairfield to Harvey dated December 12, 1839 and Harvey to Fairfield dated December 19, 1839.

his habit of corresponding directly with Fairfield instead of directing his correspondence through the proper diplomatic channels to the American government in Washington. Harvey had also been directed not to take an active role in the boundary discussions.<sup>205</sup> Sydenham's response to Harvey was that troops were being sent to protect British interests in the area. London had directed that he was "not to permit Maine to occupy or possess land to the north of the St. John's" and to "maintain in perfect security the communications by the Madawaska between Fredericton and Quebec".<sup>206</sup> Two companies of troops were sent to Madawaska in December of 1840. Fairfield, of course, protested this to Harvey and Van Buren without success.<sup>207</sup> Harvey's handling of the post-Aroostook War period led to his dismissal from office in early 1841. His successor was Sir William Colebrooke who took office in April 1841.<sup>208</sup>

The presence of the Maine posse in the Madawaska settlement continued to generate friction. Maine seemed to be making the St. John River the line of partition. This concerned the British authorities as it challenged their jurisdiction

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<sup>205</sup> Library and Archives Canada (LAC). Governor General Internal Letterbook, 1839-1840. RG7, G17A, Vol. 1. Sydenham to Harvey dated December 26, 1840. Sydenham criticized Harvey for expressing regret to Fairfield about the recent troop movements and reminded Harvey of Lord Russell's despatch of February 19, 1840 in which Harvey was instructed not to take an active role in the boundary discussions. Harvey was still not sending copies of his letters to Fox to Sydenham. All in all, a good jacking-up of Harvey.

<sup>206</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1. pp. 104-105. Sydenham to Harvey dated November 23, 1840.

<sup>207</sup> Scott. Ties of Common Blood. cites Fairfield to Van Buren 15 December 1840, Archival Records of the State of Maine IV, 642-644. Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1. pp. 105-106. Fairfield to Harvey dated December 15, 1840. Refers to Harvey's letter of December 10<sup>th</sup> that gave notice of the troop movements to the Madawaska settlement and duly protests it as a "direct and palpable infringement of the subsisting arrangement". Of course, all of Maine's officials in the area acted properly.

<sup>208</sup> MacNutt. New Brunswick. p. 273 and p. 478, cites Russell to Harvey dated January 25, 1841 in the footnote.

over the part of the Madawaska settlement that was on the right, or southern, bank of the river. It also meant that these British-Acadian citizens could find themselves becoming Americans. The Acadians did not wish this and informed Colebrooke of their desire to remain British.<sup>209</sup> The British were hesitant to station any troops on the south bank of the St. John River as the American government saw this as a violation of the existing agreement.<sup>210</sup> In April of 1841, John Baker was arrested and convicted for aiding the desertion of seven soldiers from the Madawaska garrison. Captain Rines, the commander of the posse at Fish River, was implicated as well.<sup>211</sup> Because of the real possibility of collision, the Warden was directed to “enjoin the strictest caution ...with regard to his conduct and ... abstain from interference with the American civil posse”.<sup>212</sup> Meanwhile, the American government, at the insistence of Maine, which was finding the civil posse expensive to maintain, was considering stationing American troops at Fort Fairfield and Fort Jarvis. The British were not initially in favour of this, as it would give a sense of permanence to the American presence on the St. John River.<sup>213</sup> But, because of the ongoing problems with the conduct of the posse, it became seen as “a measure of wise precaution and probably the only one that would effectively guard against

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<sup>209</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, pp. 171. Extract of letter from M. Langevin, the Roman Catholic priest in the Madawaska settlement.

<sup>210</sup> British Parliamentary Papers. Colonies. Canadian Boundary, Vol. 2. (BPP/CCB) Session 200. pp. 1-2. Lord Sydenham to Lord John Russell dated 9 August 1841 and Lord Palmerston to Fox dated 31 August 1841.442. The British government rejected the American suggestion and maintained that it was their right, if they so wished, to station troops on the south bank of the St. John River as per the agreement between Scott, Harvey and Fairfield.

<sup>211</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, p. 166. Colebrooke to Sydenham – no date but in May 1841.

<sup>212</sup> Ibid. pp. 169-170. Sydenham to Colebrooke dated May 21, 1841.

<sup>213</sup> Scott. Ties of Common Blood. pp. 274-275. Cites Senator Reuel Williams to Fairfield dated July 19, 1841.

collision”.<sup>214</sup> The American troops were sent to Fort Fairfield and the newly renamed Fort Kent in early September of 1841. Because this happened before a formal agreement had been made with the British, Sydenham took the opportunity to order part of the garrison at Madawaska to move to the south bank “with a view to more effectually to protect Her Majesty’s subjects, and to mark, most distinctly, our determination to maintain our jurisdiction there”.<sup>215</sup>

The old agreements about not extending the exercise of jurisdiction had been discarded by both nations and the disputed territory was clearly partitioned along the line of the St. John River. The only anomaly was the British garrison on the south bank of the river, which was trying to preserve the British jurisdiction over that part of the Madawaska settlement. Any attempts to resurvey the boundary and implement the terms of the 1783 Treaty of Paris had failed. Both nations realized that there needed to be a compromise boundary and so the scene was set for the negotiations between Daniel Webster, the U.S. Secretary of State, and Alexander Baring, Lord Ashburton, who met in Washington, DC through the summer of 1842.<sup>216</sup> After long negotiations, a solution was found. The agreement, known as the Webster-Ashburton Treaty was signed in 1842 and ratified in 1843. While the United States received 893 fewer square miles than had been awarded by King William I, Maine gained access to the St. John River in order to float timber to

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<sup>214</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1, pp. 170-171. Colebrooke to Sydenham dated June 2, 1841.

<sup>215</sup> Ibid. p. 225. Sydenham to Fox dated September 14, 1841.

<sup>216</sup> The details of these negotiations have been discussed in detail in Howard Jones. To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783 – 1843 and Francis M. Carroll. A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842. It is not intended to provide a detail account of them in this dissertation.

market.<sup>217</sup> The important outcome was that the British were able to maintain control of the vital Grand Communications Route. Ashburton had received direction from London that this was to be an uncompromising position and he succeeded in this.<sup>218</sup> Unfortunately, in order to achieve this, the British were unable to retain control of the right, or south, bank of the St. John River in the Madawaska settlement. Those loyal Acadians living there now found themselves to be part of the United States. The Maine delegates to the negotiations had attempted to have John Baker's property, that was located on the north bank of the St. John River, be part of Maine. Given his history of agitating in support of Maine, they were concerned about Baker's fate if his land became part of New Brunswick. In order to eliminate this sticking point, Ashburton made an informal agreement for the British government to purchase Baker's land at a fair price, should he decided to sell and move to the United States.<sup>219</sup> Baker appears to have considered this in 1842 but nothing came of it.<sup>220</sup> In an irony of fate, John Baker, an ardent supporter of Maine, became a British citizen, finally.

### **Summary.**

The right to exercise jurisdiction in the disputed territory was an ongoing issue during the Maine/New Brunswick border controversy. Because of the lack of any American governmental presence in the disputed territory until towards the end

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<sup>217</sup> Judd. Aroostook. p. 38.

<sup>218</sup> Bourne and Watt. BDFA, Pt. 1, Series C, Vol. 1. pp. 247-249. Earl of Aberdeen to Lord Ashburton dated March 31, 1841.

<sup>219</sup> Ibid. pp. 340-343. Ashburton to the Earl of Aberdeen dated August 9, 1842.

<sup>220</sup> LAC. MG9A2 Vol. 6 p2 1831-1842. Letter from MacLauchlan to Alfred Reade, Private Secretary to Lieutenant Governor Colebrooke, dated 11 November 1842. Baker had indicated that he wished to sell his land and had asked for a valuation.

of fourth decade of the controversy, Great Britain had established and maintained jurisdiction in the area. It was only after Maine became a state in 1820, and started to actively push its claim to all of the disputed territory, that the question of jurisdiction became an issue. This led to a three, and perhaps four way when Massachusetts is included, contest for control. The two main stakeholders, the United States and Great Britain, had an understanding that any arrangements for the exercise of jurisdiction would only be temporary pending the resolution of the border controversy. While this understanding was fine from a theoretical sense, Great Britain was actually exercising jurisdiction and was establishing its claim by its physical presence.

Perhaps this was not an immediate concern of the American government, but it was to Maine. Maine won its struggle for independence and statehood from Massachusetts in 1820 and was keen to realize its whole birthright, which, at least in Maine's opinion, included all of the disputed territory. As Maine became more frustrated by the slowness of the boundary discussions, it also became braver in its actions. This culminated in the Aroostook War of 1839 and the subsequent occupation of the Aroostook and Fish River valleys. While the United States was obligated to support Maine in these actions, both it and Great Britain felt a new sense of urgency to resolve the boundary issue. The Aroostook War had clearly shown that the Anglo-American understanding about the exercise of jurisdiction within the disputed territory was interpreted differently by each nation. This resulted in the negotiation of a new agreement that, by Maine's actions, led to the partitioning of the disputed territory. Despite this, the possibility of a third Anglo-

American war had been avoided. However, tensions were still running high between both countries, not just over the disputed territory, but for a number of other reasons as well and war clouds were gathering. Fortunately, following a change of government in both countries, the time became right for a compromise solution and this was agreed to as part of the Webster-Ashburton Treaty of 1842.

These events provide valuable insight into what happens as national boundaries are negotiated. For the disputed territory, the course of events was not straightforward. The two national governments, after it was determined that the Treaty line of 1783 was impossible to locate, were unable to negotiate a compromise border because of the structure of the United States government. The distribution of power between the Federal or General government and the individual states meant that Maine, supported by Massachusetts, could thwart any potential agreement that was not to its perceived best interest. "States Rights" was trump. Only the threat of war, backed by years of fruitless border negotiations, convinced the two nations that it was in their collective best interests to find a settlement and to do so quickly. Great Britain, with its centralized control of the provinces of Canada and New Brunswick, was able to impose an agreement on British North America once the United States gained the support of Maine and Massachusetts for what would become the Webster-Ashburton Treaty. Possibly using this experience as a guideline, Great Britain had to again impose a solution in 1851 that finally resolved the boundary between Quebec and New Brunswick.

Perhaps the most important aspect of the issue of jurisdiction was the steadfastness shown by the governments of the United States and Great Britain to

resolve their differences in a “spirit of forbearance and moderation”. Tension ran high on several occasions and it was frequently thought that war was inevitable. However, good will prevailed and North America was spared a Third Anglo-American war.



### **Study 3 – Trespass Timber in the Disputed Territory**

“...they mean to get all the timber up the Aroostook, and up to Madawaska, unless our Government take some measures to prevent it”<sup>1</sup>

#### **Introduction and Historiography.**

The cutting of timber was the major cause of friction between representatives of the state of Maine and the province of New Brunswick within the disputed territory. Neither group was interested in conservation or managed use of the timber resources of the area. Instead, their interest was in the revenues that their governments could receive from selling the rights to cut the timber. Although New Brunswick, at the insistence of Maine, stopped issuing timber licences in the disputed territory in 1825, it still derived revenue from the transportation and sale of the illegally cut “trespass” timber in Saint John. Maine and Massachusetts, which jointly claimed the land in dispute, wanted to receive their share of this revenue. The history of the timber industry within the disputed territory between 1818 and 1842 was very much that of the “cat and mouse” game between the lumbermen and the officials of Maine and New Brunswick. Or was it? The answer to this question is not clear because the nature of the timber industry within the disputed territory has not been investigated in depth.

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<sup>1</sup> M. Van Buren. Maine Boundary. Washington, D.C.: United States Government, 1838. [Three thousand copies of the documents and papers relating to the Maine Boundary were printed in response to a Resolution of the House of Representatives dated 19 February 1838. The Government documents section of the Harriet Irving Library at UNB holds a copy of this.] p. 261. House Document No. 90. Extract from a letter written by Samuel Cook, Assistant Land Agent for Maine dated March 25, 1824. Cook believed that the British were intending to cut all of the timber in these areas unless Maine took action to stop them.

This is not to say that the timber industry in New Brunswick and Maine has not been studied and written about. Indeed, there are several scholarly books on the subject but, for a variety of reasons, they have generally bypassed the disputed territory. There are good reasons for this. First, the disputed territory was outside of the mainstream of the timber industry. From the New Brunswick perspective, all cutting there was illegal after 1825, although there were a few exceptions. Meanwhile, Maine and Massachusetts, which jointly claimed the lands in the disputed territory, were keen to issue timber permits and sell settling lands. However, their efforts were constrained somewhat by the remoteness of the area and the actions of the American and British governments. Yet, the timber industry was a key component of the Maine/New Brunswick border controversy during the period from 1820 to 1842. Studying this industry will provide additional insight to the larger border dispute.

While the activities of Maine, Massachusetts and New Brunswick were ostensibly conducted within the overarching policies of their respective governments, those of the United States and Great Britain, this was not really the case. Maine, accompanied by Massachusetts, strived to gain revenues from the lands in the disputed territory and followed an active policy of selling timber and settling lands. This was an important source of revenue for the two states. However, this policy was at odds with the official United States policy that tried to have the disputed territory remain as it was at the end of the War of 1812, pending a resolution of the boundary issue. Great Britain, which partially subscribed to this policy, also recognized that settlement would occur and expand. Its response was to

adopt a stewardship role and to exercise jurisdiction over the expanding limits of settlement while attempting to control the illegal cutting of timber. New Brunswick, while complying with imperial policy from London, also benefited from the proceeds of the sale of illegal or trespass timber.

The sale of timber licences was an important source of revenue as Thomas Baillie, the Surveyor-General of New Brunswick, tried to make the Executive Government, and the Civil List that funded their pay, financially independent from the Legislative Assembly. This was a key strategy during the struggle for responsible government in the 1820 and 1830s.<sup>2</sup> A paradoxical situation developed where the Crown Land Office was actively trying to prevent the cutting of trespass timber in the disputed territory while, at the same time, actively collecting the revenue that was received when the seized timber was either redeemed by the payment of a fine or sold at auction. The Crown Land Office did not benefit financially from this as the money was placed in a trust called the Disputed Territory Fund. However, the economy of the province did benefit as the trespass timber was moved to market at Saint John, sold and exported. Perhaps some of this money found its way back into the government coffers from sources other than the casual and territorial revenue of the Crown.<sup>3</sup>

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<sup>2</sup> MacNutt, W.S.. "The Politics of the Timber Trade in Colonial New Brunswick, 1825-40". Canadian Historical Review, Vol. XXX, No. 1 (March, 1949):47-65. . pp. 51, 57 and 63.

<sup>3</sup> Journal of the House of Assembly of New Brunswick for 1843. Fredericton: John Simpson, 1843. p. xviii. The Casual and Territorial Revenues were mainly derived from the sale of timber and Crown lands. Other, small sources were contingencies received by the Secretaries and Crown Land offices and from fines in the Courts of Law.

A.R.M. Lower was among the first to establish the background narrative to the lumber industry in British North America. In books such as Settlement and the Forest Frontier in Eastern Canada, The North American Assault on the Canadian Forest: A History of the Lumber Trade between Canada and the United States and Great Britain's Woodyard: British America and the Timber Trade, 1763-1867, he provided an excellent overview of the forest industry.<sup>4</sup> His description of the economics of the timber industry, with a focus on the export market to the United Kingdom, the need to regulate the cutting of timber and the relationship between timber cutting and settlement, gave the background context for the examination of the events within the disputed territory, which he only briefly touched upon. Other authors have written more focused accounts of the timber industry in New Brunswick and Maine.

Graeme Wynn, in Timber Colony: A Historical Geography of Early Nineteenth Century New Brunswick, described the timber industry in New Brunswick in detail at the provincial level.<sup>5</sup> The economics of the timber trade, the way it developed from locally based small-scale operations through larger scale operations with merchant support to large-scale operations, and the role of the Crown Land Office are clearly explained. In an earlier article, "Administration in Adversity: The Deputy Surveyors and Control of the New Brunswick Crown Forest

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<sup>4</sup> Lower, Arthur R.M. Settlement and the Forest Frontier in Eastern Canada. Toronto: The MacMillan Company of Canada Limited, 1936; The North American Assault on the Canadian Forest: A History of the Lumber Trade between Canada and the United States. Toronto: The Ryerson Press, 1938; and Great Britain's Woodyard: British America and the Timber Trade, 1763-1867. Montreal: McGill-Queen's University Press, 1973.

<sup>5</sup> Wynn, Graeme. Timber Colony: A Historical Geography of Early Nineteenth Century New Brunswick. Toronto: the University of Toronto Press, 1981.

before 1844”, he expanded on the role of the Crown Land Office and the Deputy Surveyors in developing and enforcing the timber regulations.<sup>6</sup> However, neither book nor article contains much information about the activities in the disputed territory. There are perhaps two reasons for this. First, the disputed territory was outside of the mainstream of the timber industry as almost all cutting had been prohibited after 1825. Second, the records have not survived as well for this area as have those for Northumberland and Charlotte Counties that Wynn used for his detailed studies.

Richard G. Wood, in A History of Lumbering in Maine, 1820-1861, has written a comparable history of the timber industry in Maine.<sup>7</sup> Unlike Wynn, Wood does provide more information about the industry in the disputed territory but not to a significant degree. He also does not discuss this activity in relation to the boundary dispute in any detail. Like Wynn, this is a history of the state-wide industry and not just the industry in the disputed territory. As did Wynn, Wood provides a good description of the mechanics of the timber industry – the camps, river drives, scaling of timber, etc. – but from the Maine perspective. This includes useful information on the relationship between the land agents of Maine and Massachusetts and on their joint plans for the sale of timber and settling lands. David C. Smith wrote about the period after 1861 in A History of Lumbering in Maine, 1861-1960. While this book does not address the pre-Webster-Ashburton

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<sup>6</sup> Wynn, Graeme. “Administration in Adversity: The Deputy Surveyors and Control of the New Brunswick Crown Forest before 1844”. Acadiensis, LII, I (Autumn, 1977): 49-65.

<sup>7</sup> Wood, Richard G. “A History of Lumbering in Maine, 1820-1861”. The Maine Bulletin, Vol. XXXVII, No. 7 (January) 1935.

period, Smith did make the key observation that “the central fact about Maine throughout its history is that Maine is lumber and lumber is Maine”. As he explains that the economy of Maine rose and fell with the timber market, this helps to explain the importance placed on the industry by Maine and Massachusetts.<sup>8</sup> Nancy M. Gordon’s article, “Protecting the Public Interest: Land Agents vs. Loggers on the Eastern Frontier, 1820-1840”, roughly parallels Wynn’s about the Crown Land Office.<sup>9</sup> While providing interesting insights to the interactions by the Land Agents of Maine and Massachusetts with each other and the loggers, it does not mention the activities within the disputed territory.

There are two main river systems within the disputed territory: the Upper St. John River, which is fed by tributaries such as the Allagash, Fish and Madawaska Rivers, and the Aroostook River. Richard W. Judd has contributed a great deal to the history of the timber industry in the disputed territory. In “Timber Down the St. John: A Study in Maine-New Brunswick Relations”, he discussed the nature of the timber industry along the Aroostook Valley but his emphasis was on the post 1842 period.<sup>10</sup> This article became part of an expanded history that was published as Aroostook: A Century of Logging in Northern Maine.<sup>11</sup> The book covers the period from about 1776 to 1876 and, due to its scope, only about ten percent of it, or 26 pages, are used to discuss the timber operations along the Aroostook Valley prior to

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<sup>8</sup> Smith, David C. A History of Lumbering in Maine, 1861-1960. Orono, ME: University of Maine Press, 1972. p. 1.

<sup>9</sup> Gordon, Nancy M. “Protecting the Public Interest: Land Agents vs. Loggers on the Eastern Frontier, 1820-1840”. Enterprise & Society, 3 (September 2002): 462-481.

<sup>10</sup> Judd, Richard W. “Timber Down the St. John: A Study in Maine-New Brunswick Relations”. Maine Historical Society Quarterly, (1983) pp. 195-217.

<sup>11</sup> Judd, Richard W. Aroostook, A Century of Logging in Northern Maine. Orono, Maine: The University of Maine Press, 1989.

the Webster-Ashburton Treaty of 1842. He later co-edited Maine: The Pine Tree State from Prehistory to the Present and contributed a sub-chapter that provided a brief overview of the Maine/New Brunswick border controversy.<sup>12</sup> This included a discussion of the importance of the timber trade to Maine. Judd's focus is on the international economy of the timber trade, which was the cooperative relationship between the lumbermen of Maine and New Brunswick as they harvested the timber despite the political and legal issues of the day. In support of this theme, he has also provided a good overview of the geo-political aspects of the border dispute. The space constraints in these publications limited the discussion of the interactions between the American land agents and the British deputy surveyors and their effort to support the policies of their respective governments. This discussion is important in order to examine how the national policies were actually enacted by the men on the ground. Regrettably, there is no similar historical account about the timber operations along the Upper St. John River.

Béatrice Craig has written extensively about the Madawaska settlement that eventually stretched about 125 kilometres from just above Grand Falls to the St. Francis River. Her focus was on the Acadian/Canadian inhabitants of this area, their family ties and the agricultural economy. Her work provides an excellent source of information about the history of the Madawaska settlement. Craig's earlier writings have been expanded in Backwoods Consumers and Homespun Capitalists: The Rise

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<sup>12</sup> Judd, Richard W., Edwin A. Churchill and Joel W. Eastman, ed. Maine: The Pine Tree State from Prehistory to the Present. Orono, ME: University of Maine Press, 1995. See pp. 345-353, "The Aroostook War, 1828-1842" in Chapter 15.

of a Market Culture in Eastern Canada.<sup>13</sup> Because of her focus, the activities of the American and British settlers in the area and their ties to the timber trade are only one aspect of the narrative and were not examined at length. She has added to this discussion in her latest book The Land In Between: The Upper St. John Valley, Prehistory to World War I.<sup>14</sup> Again, because of the scope of the book, which covered the period from the end of the last ice age to the First World War, not much space was dedicated to the pre-1842 timber industry. However the information provided in both books was of great importance and was clearly the result of extensive research. The historiography leaves scope for a more detailed examination of the lumber industry and its geo-political aspects along the Upper St. John River.

The aim of this study is to add to the historiography of the timber industry in the disputed territory and consequently to that of New Brunswick and Maine. The current historiography has either bypassed this area or has discussed it lightly as the focus was on other places or later periods. Yet, the timber industry of the disputed territory was the source of much friction between the American and British governments during the period from 1820 to 1842. It was also the commonly accepted cause of the Aroostook War that nearly started the third Anglo-American war in 1839. By better understanding the interactions between the national governments, the state and provincial agents, and the lumbermen and the settlers, it will be possible to gain a better perception of the significance of this industry to the

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<sup>13</sup> Craig, Béatrice. Backwoods Consumers and Homespun Capitalists: The Rise of a Market Culture in Eastern Canada. Toronto: University of Toronto Press, 2009.

<sup>14</sup> Craig, Béatrice and Maxime Dagenais, in collaboration with Lisa Ornstein and Guy Dubay. The Land In Between: The Upper St. John Valley, Prehistory to World War I. Gardiner, ME: Tilbury House, 2009.



history of the disputed territory. It will also be possible to determine if the industry followed the normal course of development as described by Wynn and Wood or, because of the unsettled nature of the international boundary issue, where it differed. However the issue to be determined is whether or not the cutting of illegal or trespass timber was as great of a problem as Maine and Massachusetts claimed it was, or was this just a convenient ruse to advance their claims to all of the disputed territory?

### **The Early Timber Industry in the Disputed Territory to 1820.**

The timber industry was closely connected with the pattern of settlement within what would become known as the disputed territory. The respective governments of New Brunswick, Massachusetts and later Maine regulated both timber cutting and settlement, for they held power to grant or sell land and to issue timber-cutting permits. In order to understand the implications of land use within the disputed territory, and its effect on the course of the border controversy, these three aspects – timber cutting, settlement and government – need to be studied concurrently. The two main areas of timber cutting and settlement within the disputed territory were along the Upper St. John River and its tributaries, and the Aroostook River. Other river systems were also involved such as River de Chute, which empties into the St. John River about 28 kilometres below the mouth of the Aroostook. These rivers were the roads of their day – they provided access into the area by the settlers and allowed them to transport their timber downriver to market at Fredericton or Saint John. Agricultural products could be either shipped downriver or sent up river to Lake Temiscouata and over the Grand Portage to the St. Lawrence

River and Quebec. New Brunswick, Maine and Massachusetts later built land roads into the area but these were a lower priority as long as the river systems provided an acceptable means of transportation. European settlement predated lumbering along the Upper St. John River whereas the opposite occurred along the Aroostook River. This difference changed the course that the development of the timber industry followed in each area and made the areas somewhat dissimilar. Another factor that made them different was the larger American influence in the Aroostook River valley.

Government regulations predated both settlement and timber cutting in the disputed territory. Within the British context in North America, these originated with the “Broad Arrow” regulations circa 1688 that were initially intended to protect white pine that was suitable for use as masts. The regulations were incorporated into the charters of the British North American colonies. The Surveyor General of Woods in America was charged with marking the trees with the Broad Arrow mark and protecting them from being cut illegally by those who did not hold a licence to do so. The laws applied to both granted and Crown Lands. The penalties for violating them were severe – either the forfeiture of the land that they were cut on, if granted, or a fine of £500.<sup>15</sup> While British regulations continued to apply in Nova Scotia (and New Brunswick after 1784), they did not in the newly created United

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<sup>15</sup> Johnson, Ralph S. Forests of Nova Scotia: A History. Halifax, NS: Four East Publications and the Nova Scotia Department of Lands and Forests, 1986. pp. 39-40. Johnson quotes acts of Nova Scotia dating from 1762, 1772, 1774, 1775 and 1785 that regulated the cutting and sale of timber, and Grant, B.J. Fit to Print. Fredericton, NB: Fiddlehead Poetry Books & Goose Lane Editions, Ltd., 1987. p. 174. Grant printed an entry from The Fredericton Telegraph of 20 December 1806. Edward Winslow, by order of Sir John Wentworth, Surveyor General of His Majesty’s Woods in America, had the list of fines published.

States of America. Massachusetts, which included the District of Maine, established a Land Office in 1783 and appointed a State-surveyor to oversee the “wild lands”. White pine continued to be protected and there was a fine of \$100 for illegally cutting it on public lands.<sup>16</sup>

Despite these regulations, the cutting of trespass or illegal timber was an ongoing problem. During the colonial period, Sir John Wentworth, while Governor of New Hampshire and Surveyor General of the King’s Woods, had encounters with trespassers who were cutting pine timber in Vermont and along the Androscoggin River in what is now southern Maine.<sup>17</sup> The illegal cutting of timber also became a problem in New Brunswick. During the period 1809-1810, Edward Winslow received reports of the illegal cutting of timber and of seizures made by the Deputy Surveyors in virtually all sections of the province.<sup>18</sup> Thus both jurisdictions, those of Massachusetts and New Brunswick, had a history of regulations that governed the cutting of timber and a history of combating illegal timber cutting. The year 1816 was significant for the regulation of the timber industry in the disputed territory. In Massachusetts, the Land Office legislation had lapsed and a new Land Office was created. The Surveyor General had the expanded role of the “management, sale and

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<sup>16</sup> Williamson, William D. The History of the State of Maine. 2 Vol. Hallowell, ME: Glazier, Masters & co., 1832. Vol. 2, pp. 507-508.

<sup>17</sup> Mayo, L.S. John Wentworth: Governor of New Hampshire, 1767-1775. Cambridge: Harvard University Press, 1921. pp. 52-53 and 56.

<sup>18</sup> The Winslow Papers. <http://www.lib.unb.ca/winslow/index.html>. Examples of the reports are: December 18, 1809. Ward Chipman, Jr. to Edward Winslow reported the seizure of timber at Shediak and Passamaquoddy (Vol. 15-26); January 23, 1810. Chipman to Winslow reported the seizure of timber in Westmoreland and Charlotte counties in 1809 (Vol. 15-33); and 8 May 1810. John Henderson to Winslow reported illegally cut timber in the Miramichi and Northumberland County (Vol. 15-42). The Shediak timber was sold for 5/ per ton for a total of £37, making the amount of the seizure to have been 148 tons.

settlement” of the “eastern lands” – presumably in the District of Maine.<sup>19</sup> In New Brunswick, the centralized control from Nova Scotia was devolved to make Crown land administration a provincial responsibility. New regulations were instituted in 1817.<sup>20</sup> This timing coincided with the emergence of commercial timbering in the disputed territory.

The first European settlers within the disputed territory were a group of Acadians who moved there from above Fredericton at Aukpacque and the Kennebecasis River at French Village. Following the American Revolution and the influx of Loyalists, they had requested grants of land along the Upper St. John River between Grand Falls and the Madawaska River. Sir Thomas Carleton, the Governor of New Brunswick, agreed to this and the Acadians began moving into the region, which would become known as the Madawaska settlement, in 1785 or 1786. They received their land grants in 1790 and 1794. French Canadians from Quebec soon joined them. Over the next thirty years, they formed a prosperous farming community. While timber was cut to clear the fields and build houses and barns, there is no evidence of any commercial logging. The first buildings were made of logs, however, there was a sawmill in operation, presumably to serve strictly local requirements, by 1808.<sup>21</sup> This began to change in 1818.

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<sup>19</sup> Williamson. History of Maine. p. 662.

<sup>20</sup> Wynn. Timber Colony. pp. 138-140.

<sup>21</sup> Raymond, W. O. “The First Governor of New Brunswick and the Acadians of the River Saint John”. Transactions of the Royal Society of Canada, Third Series, 1914, Volume III. pp. 438-439. Public Archives of New Brunswick. New Brunswick Land Grants: Vol. III Grant 226 and Vol. B Grant 292. Craig. Land In Between. pp. 66 and 80.

Following the War of 1812, “Ohio fever” began to sweep through New England. The “infatuating spirit of emigration to the western states” characterized this, as people responded to the lure of better lands and a better life in Ohio and Kentucky. It has been estimated that Maine lost between 10,000 and 15,000 people to this westward migration.<sup>22</sup> However, not all residents of the District of Maine looked westward for a better future. Some looked to the northeast and the timberlands of the disputed territory. A group of lumbermen from around Moscow, on the Kennebec River, began arriving in the Madawaska settlement about 1817. There is some question about the date of the first arrival. According to a report submitted by Captain Pierre Du Perre [Duperré] in 1819, Captain Nathan Baker scouted the area in February of 1818 and then returned with his family in August. Captain Asa Fletcher joined him and they formed a partnership in a timber business. Other Americans, John and George [John, Jr.] Herford [Harford] also arrived in August with their families. The Harfords, father and son, took up farming and shingle making. The Americans settled along the St. John River above the Madawaska settlement. By February of 1819, with a crew of five men, Baker had cut an estimated 1,000 to 1,200 tons of timber along the north side of the St. John River. Some of this was cut on lots belonging to earlier settlers who protested their actions. However, Baker ignored the settlers’ protests as he claimed that they were on American territory and could do what they wished.<sup>23</sup> Baker’s claim that they

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<sup>22</sup> Williamson. History of Maine. pp. 664-665.

<sup>23</sup> Van Buren. Maine Boundary. p. 72. Senate Doc. No. 130. Captain P. Du Perre to Thomas Wetmore dated 20 February 1819. It should also be noted that spellings change depending on the writer. Craig

were on American territory tends to reinforce the suggestion that they first arrived in 1818. It was not until 1817/1818 that the line north from the monument at the source of the St. Croix was surveyed. Prior to that time, it would have been impossible to know the extent of the American claim to the area.<sup>24</sup>

However, when S.B. Barrell conducted an investigation in late 1827 and early 1828 on behalf of the American government, he determined that John Harford and his son, John, Jr., had arrived in June 1817 and that Nathan Baker had arrived a few months later. All of them were involved in lumbering. Barrell's account matches Duperré's in that the families of the Americans arrived in the summer of 1818. According to Barrell, Baker soon formed a partnership with Samuel Nevers, a Saint John merchant who had a provincial licence to cut timber.<sup>25</sup> Fletcher did not stay in Madawaska for long and the new partnership would likely have been formed after his departure. Craig dates it to the winter of 1818-1819 cutting season.<sup>26</sup>

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uses Duperré and Harford is the correct spelling for that family's name. The spelling, as given, will be used when referencing historical documents.

<sup>24</sup> Definitive Statement, on the part of the United States, of the Case Referred, in pursuance of the Convention of the 29th September, 1827, between the said States and Great Britain, to His Majesty the King of the Netherlands, for his decision thereon. (Washington: Office of the United States' Telegraph, 1829). p. 59. This information was found on the definitive website pertaining to the Madawaska Settlement, <http://www.upperstjohn.com/>, that is maintained by Chip Gagnon, Ph.D., Associate Professor of Politics at Ithaca College, Ithaca, NY.

<sup>25</sup> Van Buren. Maine Boundary. p. 56. Senate Doc. No. 130. Report of the Special Agent. Barrell to Clay dated February 11, 1828.

<sup>26</sup> Fletcher does not appear in the 1820 United States Census of Madawaska, while Baker and the two Harfords do. From The Upper St. John River website <http://www.upperstjohn.com/1820/madawaska.htm>). Transcribed, formatted and annotated by C. Gagnon, ©2003 from "Appendix No. L: Extract from the Census of the United States, for the District of Maine, in 1820," in *Definitive Statement, on the part of the United States, of the Case Referred, in pursuance of the Convention of the 29th September, 1827, between the said States and Great Britain, to His Majesty the King of the Netherlands, for his decision thereon*. (Washington: Office of the United States' Telegraph, 1829), pp. 349-354. That transcription is from the National Archives and Records Administration Federal Population Schedules for the 4th Census of the United States in 1820. Craig. Backwoods Consumers. p. 76, states that the partnership between Baker and Nevers dates from 1818-1819.

Duperré doesn't mention Fletcher in his letter of February 1819. In either case, the Americans had arrived to stay by the summer of 1818 and were busily engaged in cutting timber.

The first recorded transportation of Madawaska timber to market occurred in the spring of 1819. In a letter dated 26 May 1819, Duperré stated that Nathan Baker had passed by his house on 14 May with "4 large Raft of timber" on the way to Grand Falls. Duperré also said that he was going to Fredericton "with the small raft first to see the market for this timber". Based on the letter, it would appear that Duperré had about 2,500 tons of timber to sell in total.<sup>27</sup> It isn't clear if this was all his timber or the result of a community effort. Duperré was one of the leaders of the community and a noted entrepreneur.<sup>28</sup> It would not be unexpected for him to organize a collective shipment. From this letter, it would appear that commercial logging had begun in the disputed territory by the winter of 1818/1819. However, there is some uncertainty about when it actually started. Duperré's letter indicates that he was also cutting timber for export from the Madawaska settlement and there is no reason to believe that this was the first time. His remark in the letter to Thomas Wetmore, the provincial Attorney General, that he was taking a small raft to test the market could indicate that this was not the first time that he had taken timber to sell at Fredericton. If correct, this challenges the accepted theory that the first

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<sup>27</sup> Provincial Archives of New Brunswick (PANB). RS 76. 4.a.2.b. Correspondence with Capt. Pierre Du Perre. Letter from Du Perre to Thomas Wetmore, Attorney General, dated 26 May 1819.

<sup>28</sup> Craig. Backwoods Consumers. pp. 56-58, provides a good overview of Duperré's entrepreneurial talents.

commercial lumbermen on the Upper St. John River were Americans.<sup>29</sup>

Unfortunately, the known information in the historical record neither confirms nor denies this suggestion.<sup>30</sup>

### **To the Mid-1820s – A Time of Friction and Partial Cooperation.**

The District of Maine separated from Massachusetts to become a state in 1820. One of its earliest goals was to press for a boundary that would give Maine all of the disputed territory as claimed by the United States under the Treaty of Paris of 1783.<sup>31</sup> In order to help enforce Maine's claim to this area, Maine created the position of Land Agent in 1820. The Agent's initial responsibility was for "public roads and the care of timber upon the public lands". It was envisioned that the Land Agents of Maine and Massachusetts should work together as Massachusetts was given the right to help with the appointment of the Maine Land Agent. George W. Coffin was the Land Agent for Massachusetts during the 1820s and 1830s while the Land Agent for Maine changed on a frequent basis.<sup>32</sup> This arrangement stemmed from one of the conditions under the Articles of Separation by which Massachusetts retained one half of the ungranted lands within the new state.<sup>33</sup> The land was divided into townships and allocated between Maine and Massachusetts on an

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<sup>29</sup> Craig, Land In Between, p. 116, indicates that the first lumbermen were Americans.

<sup>30</sup> Discussed in exchange of emails between Béatrice Craig and Gary Campbell on 14/15 August 2009.

<sup>31</sup> Burrage, Henry S. Maine in the Northeastern Boundary Controversy. Portland, ME: Marks Printing House, 1919. pp. 117 to 120. These pages set the tone for Maine's position concerning the boundary controversy that continued until the signing of the Ashburton-Webster Treaty in 1842.

<sup>32</sup> Wood, Lumbering, p. 49. The position of Land Agent was created by *Resolves of Maine*, 1820. Portland, 1820, p. 34, chapter 22.

<sup>33</sup> Sprague, John Francis. "The North Eastern Boundary Controversy, 1783-1842". Chapter X. p. 249. Hatch, Louis Clinton, ed. Maine: A History. 3 Vol. New York: The American Historical Society, 1919. pp. 249-281.



alternating basis, creating a pattern of land ownership on the map that was similar to the black and white squares on a chequer board. It created an interesting situation whereby the Land Agents of Maine and Massachusetts, while normally working in harmony, could also find themselves at cross purposes. When this occurred, it made their mutual goal of preventing the cutting of trespass timber more difficult. The problem of trespass timber was a worry from the start for the government of Maine.

Both Governor William King, his three interim successors, and Governor Albion K. Parris were concerned about the “extensive depredations” that were being committed on the public lands through the illegal cutting of timber. Apparently, the Land Agent was not empowered to deal with this problem and so a new Resolve was passed in 1822 that gave him the task of “preservation of the timber and grass on the public lands or the sale of any part thereof”.<sup>34</sup> The disputed territory was the area of greatest concern and the most remote. The easiest access to it was by the St. John River that ran through British territory, as there were no roads. The nearest American presence was the settlement of Houlton, Maine that lay just across the border from Woodstock, New Brunswick. Despite this obstacle, agents of Maine and Massachusetts quickly became frequent visitors to the area.

The first of these was Major Joseph Treat who was sent by Governor King to explore the public lands in the northeast. Treat left Bangor on 27 September 1820 and returned on 20 November having essentially circumnavigated the disputed

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<sup>34</sup> Wood. *Lumbering*. pp. 66-67. He discussed reports of illegal timber cutting and cited *Resolves of Maine*, 1822, pp. 138-139, chapter 26 for the additional authority given to the Land Agent. Governor King resigned in May 1821 and there were three interim governors until Governor Parris took office in January 1822.

territory by travelling along the Penobscot, Allagash, St. John and Eel Rivers. His journal provides a snapshot of the area in the fall of 1820.<sup>35</sup> He reached John Harford's house in the Upper Madawaska settlement on 21 October. His journal records his journey through the Madawaska settlement and along the St. John River to the Aroostook River, which he reached on 27 October. After ascending the Aroostook for about 10 miles, he returned to the St. John River and continued his trip to Houlton, Maine. He left the area on 29 October and returned to Bangor via the Eel River portage route. While his time in the area was brief, Treat recorded important information about the state of the timber industry in his journal and survey.

Based on information received from John Harford, Sr., the British were issuing timber permits "to cut pine timber anywhere up the St. John's, Aroostook and Madawaska" rivers. The British lumbermen were taking American partners. Treat met Capt. Churchill and his son, who were provincial lumbermen working in the area. There was only one sawmill in the settlement and it belonged to Simon Hébert. With the exception of Hebert's house that was made of framed wood, the rest of the houses were made of squared timber and the barns of round logs. At Grand Falls, Treat saw "much timber and flood wood in pieces floating in the eddies of the falls". This was evidence of timber having been driven over the falls. There was a portage route of about  $\frac{3}{4}$  of a mile or 80 rods around the falls that Treat and

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<sup>35</sup> Pawling, Micah A., ed. Wabanaki Homeland and the New State of Maine: The 1820 Journal and Plan of Survey of Joseph Treat. Amherst, MA: University of Amherst Press, 2007. p. 1 and map on opposing page.

his party used.<sup>36</sup> At the Aroostook River, Treat portaged around the falls and then went up the river and crossed the boundary line into the area claimed by Maine. He found “many logs and pieces of excellent hewed pine timber” along the banks of the river. Based on his observations and local information, the lower part of the Aroostook River, just to the west of the boundary line, had been cut from “one to three years ago”. He also learned that cutting had been done as far as 45 to 75 miles upriver from the St. John.<sup>37</sup>

When he arrived at Houlton, Treat learned that “two Messrs Neal from Kennebeck, Mr. Churchill, Ephraim McCondry and Murphy, - the last three British subjects had cut timber and logs on the Aroostook last season”. He also learned that Maj. Ketchum from Woodstock had cut between “one or two hundred tons of timber” on the Aroostook two or three years before. No cutting was being done in the 1820/1821 season due to the low price of timber. In addition, Massachusetts had authorized J. Hol[u]ton, S. Cook and S. Rice “to seize timber cut on these streams [Meduxnekeag, Presqu’Ile and River de Chute] or to receive 75 cents per ton for timber. Treat also recommended several of the citizens of Houlton be appointed to civil positions included S. Cook as the representative of the Land Agent in that area.<sup>38</sup>

Treat’s report confirmed the concerns that Maine had about what it considered to be the illegal cutting of timber on the land it claimed within the disputed territory. Governor King singled out British lumbermen and their illegal

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<sup>36</sup> *Ibid.* pp. 167-168, 176, 181 and 197 to 198.

<sup>37</sup> *Ibid.* pp. 207, 208 and 212.

<sup>38</sup> *Ibid.* *Wabanaki*. pp. 229 to 231.

cutting of timber in his annual message of the Governor to the joint legislature in January of 1821. Benjamin J. Porter was sent to the Aroostook soon afterwards to put an end to this. His first course of action was to have the trespassers pay for the timber they had cut and then for them to cease operations. If they did not agree to this, Porter was to obtain assistance from Houlton, the nearest American settlement, arrest the lumbermen and their teams and send them to Houlton to await further instructions from the Maine Executive. The British lumbermen that he found agreed to pay for the timber and promised to stop cutting. This solution did not last long. Porter was sent back to the Aroostook in February 1822 with the same mission that, again, was reported as being successful.<sup>39</sup> The Land Agent's powers to combat the illegal cutting of timber were increased later that year. In 1823, it was James Irish who returned to the Aroostook to seize any trespass timber cut "westward of the line between Maine and New Brunswick".<sup>40</sup> These Maine agents appear to have operated without any interference from the British authorities.

In September of 1821, George West, a New Brunswick Seizing Officer, reported that trespass timber had been cut on the Aroostook. He confirmed Porter's presence in the area as "the Americans had claimed the timber and had been paid for it by the persons who cut it". West did not seize the timber, as he was uncertain of his authority over it. He asked Thomas Wetmore, the Attorney General, for guidance, and was told that, because of the British claim to the Aroostook Valley, he

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<sup>39</sup> Van Buren. Maine Boundary. pp. 117 to 118. Senate Doc. No. 171. Extract from the Report of the Joint Select Committee of the Senate and House of representatives of the State of Maine, in relation to the northeastern boundary of the State, January 5, 1828.

<sup>40</sup> Ibid. p. 59. Senate Doc. No. 130. December 10, 1827. This document accompanies a letter from Governor Enoch Lincoln of Maine to Samuel B. Barrell.

should be “particular in making the seizure”.<sup>41</sup> Following this, West returned to the Aroostook and seized the timber that amounted to 600 tons.<sup>42</sup> In an interesting twist of events, Porter had met with the timber cutters, Andrew Murphy and Nathaniel Churchill of New Brunswick and James Neil of Maine, at Thomas Philips house in Woodstock in May of 1821. Porter had taken a note in the amount of £31/10 for the 800 tons of timber that they had cut on the Aroostook. However, there was a stipulation in the agreement that should the New Brunswick authorities subsequently seize the timber, the note would become void.<sup>43</sup> Porter was attempting to both exercise Maine’s authority and, at the same time, not place the lumbermen in double jeopardy. News of Porter’s presence crossed the Atlantic quickly and, in November of 1821, Major General G. S. Smyth, the Lieutenant Governor of New Brunswick, received a letter from London. The Colonial Office had heard that a United States Senator was in the area and that the Americans were seizing timber at Tobique [near Perth-Andover, NB]. London wanted to be kept informed of any future activities of this nature.<sup>44</sup> Lord Bathurst reiterated this request in 1823 when he wrote to Smyth about the necessity of keeping London and the British Envoy at Washington informed of any encroachments by the Americans.<sup>45</sup> This suggests that London was keeping a close watch on the activities within the disputed territory.

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<sup>41</sup> PANB. RS 336/A/3c. West to Wetmore dated September 19, 1821 and Wetmore to West dated 12 September 1821.

<sup>42</sup> Ibid. West to Wetmore dated February 8, 1822.

<sup>43</sup> Ibid. Deposition of George Robertson dated 21 February 1822 and Thomas Phillips dated 28 February 1822.

<sup>44</sup> The National Archives (TNA), UK. CO 188/31. Sir Howard Douglas Letterbook. Letter from Downing Street to L.G. Smyth dated 13 November 1821. Actually, Porter was a Maine Senator and not a United States one.

<sup>45</sup> PANB. RS 336/A/3c. Bathurst to Smyth dated 18 January 1823.

Maine's concerns about the cutting of trespass timber were increased when a series of reports were received in 1824. Assistant Land Agent [for Maine] Samuel Cook visited the Aroostook in March of 1824. According to his report, he seized 600 tons of timber because the settlers who had cut it were not prepared to give him securities to pay for the stumpage on it. Cook also reported having met George West, a Provincial Officer, who was seizing timber on the Aroostook. This timber would be sold at auction. West said that the British were going to give land grants for up to 150 settlers along the river. West also related that he had recently been in Madawaska and had seized 2,500 tons of timber there. According to him, the New Brunswick government was going to issue timber licences for both the Madawaska and Aroostook River areas.<sup>46</sup> Part of the timber seized by West in the Madawaska belonged to John Baker who had inherited his brother's properties after his death circa 1821.<sup>47</sup> Baker was to figure prominently on the American side during the border dispute.

A later report by Maine Land Agent James Irish in July 1824 added additional information. Cook had updated his initial report with information that New Brunswick had issued permits to cut 25,000 tons of timber at the junction of the Aroostook and Machias Rivers. One of the permit holders was Peter Wilson. Permits had also been issued for the Madawaska River. Jeremiah Halton, who had

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<sup>46</sup> Van Buren. Maine Boundary. p. 261. House Doc. No. 90. Extract from a letter by Samuel Cook dated March 25, 1824.

<sup>47</sup> Sprague, J. F. The Northeastern Boundary Controversy and the Aroostook War. Dover, ME: The Observer Press, .c1910. p.86. This seizure was recorded in the minutes of Baker's trial in 1828. In 1824, George West, a seizing officer with the Crown Land Office, had seized three hundred logs that Baker had illegally cut on Crown Land. Baker was allowed to redeem them a 2/6 per thousand board feet, counting three logs to a thousand. This was allowed as Baker had indicated that he had submitted to New Brunswick law and was desirous of becoming a British citizen.

his timber seized by West, had redeemed it by paying 2/ per ton plus another 1/ per ton for having cut it without a permit. This rate was going to be in effect for all of the seized timber.<sup>48</sup> In December 1824, Anson G. Chandler, another Assistant Land Agent, reported receiving information that “at least one hundred six-ox teams” would be employed on the Aroostook during the 1824-1825 season. The firm of Cruickshank and Johnson of Saint John were said to have invested £ 30,000 in providing supplies for the lumbermen on the Aroostook. According to Chandler’s assessment, the “depredations must be immense” and “the land will be stripped; the Plymouth Township and Eaton half, especially”.<sup>49</sup> These areas compromise present-day Fort Fairfield and Caribou, Maine.

The reports alarmed the Government of Maine. The Committee on Public Lands reviewed them and, in its report, urged the American government to take action to bring about “a speedy and favorable termination” of the border dispute. The presumption was that the issue would be settled in Maine’s favour. The Committee also commented on the remoteness of the area where the depredations were occurring and the difficulties that this caused in trying to stop them. These areas were 60 to 100 miles away from any American settlement and legal proceedings were not effective because of this isolation. The use of military force might be the answer but, if used, would need to remain in the territory to ensure that the trespassers did not return. In any case, any action taken should be done in

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<sup>48</sup> Van Buren. Maine Boundary. p. 262. House Doc. No. 90. Letter from James Irish to Governor Parris dated July 14, 1824.

<sup>49</sup> Ibid. pp. 262-263. House Doc. No. 90. Extract from a letter by Anson G. Chandler dated December 25, 1824.

conjunction with Massachusetts and the American government. Governor Parris endorsed the report and forwarded it to Washington for action.<sup>50</sup> Upon receiving the report, Henry Clay, the American Secretary of State, sent it to Henry U. Addington, the British chargé d'affaires in Washington. On behalf of the President, Clay demanded immediate action by the British to cease the plans to issue land grants and timber permits within the area claimed by Maine and Massachusetts. In addition, he insisted that the two states receive indemnity for the timber that had already been cut.<sup>51</sup> The ensuing exchanges of diplomatic correspondence centred on the competing claims of the United States and Great Britain to the disputed territory, and was complicated by the actions of Maine and Massachusetts and their land agents.

In 1825, Maine and Massachusetts passed similar Resolves that authorized their land agents to survey the disputed territory in order to determine the extent of the depredations and to sell 100-acre parcels of land to settlers on the St. John and Madawaska Rivers. They were also authorized to sell timber permits in these areas. Land Agents Coffin and Irish met in Augusta on 9 September 1825 and set out for Fredericton via Saint John. Following their arrival in Fredericton on 21 September, they called upon Thomas Baillie, the Surveyor General, and asked for information pertaining to permits issued for timber cutting on the Aroostook and Madawaska Rivers. Baillie refused to provide them without the permission of the Lieutenant Governor who was away for several days. The Americans needed to continue on

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<sup>50</sup> *Ibid.* pp. 268-270. House Doc. No. 90. Report of the Senate Committee on Public Lands dated January 18, 1825.

<sup>51</sup> *Ibid.* p. 259. House Doc. No. 90. Letter from H Clay to Henry U. Addington dated March 27, 1825.



their trip and could not wait. They proceeded to Houlton where they met with Samuel Cook who provided them with the information that they needed.<sup>52</sup> According to Cook, there had been 13 timber-cutting operations along the Aroostook the previous winter. Altogether, about 15,400 tons of timber had been cut under British permits. Merchants from Saint John, Fredericton and Woodstock had backed all but one of the camps. Wilmot & Peters of Fredericton were the main participants followed by John & Walter Beedle of Woodstock. A future administrator of New Brunswick, William Black of Saint John, was also involved. They had employed local residents, both British and American citizens, to run the camps. On the Upper St. John River, above Grand Falls, there were six timber-cutting operations. They cut 6, 584 tons of timber. Wilmot & Peters backed two of the operations while the remaining four appear to have been more local enterprises. Two of the local operations had cut 900 tons without a permit but had settled with the New Brunswick government by paying the appropriate fines. Of the four local operations, the American and French settlers ran two each. Wilmot & Peters also purchased 1,100 tons from the French settlers of which 600 had been cut without a permit and was subsequently paid for. John Baker and his partner, Jacob

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<sup>52</sup> Maine State Archives. The Journal of George W Coffin, Massachusetts Land Agent, September and October , 1825. pp. 1, 2 and 8. . Judd. Aroostook. p. 25. It appears that a deputy land agent of either Maine or Massachusetts had paid a visit to the Aroostook earlier in the year. The agent found approximately \$70,000 worth of squared pine timber along the Aroostook River that he suspected was illegally cut. The attitude of the lumbermen was such "that reparation for the damages already sustained [for the timber cut] [could not] be expected from the lumberers". This reinforced Cook's decision to sell the seized timber the previous year. Judd cites a letter from George W. Coffin to Governor Levi Lincoln of Massachusetts dated August 29. 1825 that is archived in the [Maine?] Land Office Records.

Goldthwaite, were one of the groups who had cut without a permit but were later allowed to redeem their timber.<sup>53</sup>

Proceeding up river, Coffin and Irish reached Grand Falls on 1 October. The caretaker at the old barracks conducted a business of “teaming” boats and baggage across the portage as well as operating a halfway house for travellers. They visited the falls and observed on the difficulty and expense of getting logs through the falls on timber drives. In order to overcome this, Wilmot & Peters had spent \$3,000 to build a device to carry boards across the portage. Apparently it did not work well. They were also building mills at Fish River to, presumably, saw boards for export.<sup>54</sup> Continuing in the Madawaska settlement, Coffin and Irish met John Baker who accompanied them for much of their time there and gave them “much valuable information”. One of Baker’s first requests was for a permit to cut timber for his mill on the Meruimticook or Baker’s Brook. While there is no mention of the permit being issued, Coffin and Irish did sell land grants of 100 acres each to Baker and James Bacon. They would have sold more land but they did not have the time to do so. Coffin and Irish left the settlement on 5 October in the company of John Baker. Their journal provides a list of the 222 families in the settlement. They were unable to proceed up the Aroostook River due to low water. However, they did ascertain that the 20 or so families living there were primarily occupied in lumbering but also

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<sup>53</sup> Maine State Archives. Coffin Journal, 1825. pp. 24-27.

<sup>54</sup> Maine State Archives. Coffin Journal, 1825. pp. 31-37 and 53. A similar seizure of was recorded in the minutes of Baker’s trial in 1828. In 1824, George West had seized three hundred logs that Baker had illegally cut on Crown Land. Baker was allowed to redeem them a 2/6 per thousand board feet, counting three logs to a thousand. Sprague, J. F. The Northeastern Boundary Controversy and the Aroostook War. Dover, ME: The Observer Press, .c1910. p.86

farmed. The settlers were anxious to have deeds to their lands but Coffin and Irish were not authorized to sell to them. As they descended the St. John River to Fredericton, they passed through the smoke of fires on both sides of the river.<sup>55</sup>

During their journey, they had learned that the New Brunswick government had withdrawn timber permits that had been issued for the Aroostook and Madawaska Rivers [and presumably the Upper St. John]. No more would be issued until the boundary had been established. The lumbermen that Coffin and Irish met along the way were anxious to have permits to cut as they had already made arrangements for the winter to do so. In response to their pleas, the land agents thought that it would be a good idea to issue permits to them. They authorized James Bacon, for the Madawaska settlement, and Samuel Cook, for the Aroostook River, to issue permits and collect fees at the rate of \$0.50 per ton for timber and \$1.25 for 1000 feet of boards.<sup>56</sup> While the United States government, at the insistence of Maine and Massachusetts, was demanding that Great Britain cease issuing timber permits within the disputed territory, agents of these two states were busy making plans to sell their own permits. Perhaps they felt their states needed the additional revenue as they had estimated the value of the timber in the disputed territory to be worth £400,000 (based on permits fees of 1/ per ton for timber and 8d for logs). Coffin also estimated that the New Brunswick treasury had collected

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<sup>55</sup> Maine State Archives. Coffin Journal, 1825. pp. 40-41, 54, 56-57 and 69-71.

<sup>56</sup> Maine State Archives. Coffin Journal, 1825. pp. 58-60. The National Archives (TNA), UK. C.O. 188/31. Correspondence with Sir Howard Douglas, 1825. p. 167. There is a copy of Bacon's authority dated 10 Oct 1825 and signed by Coffin and Irish.

£150,000 in fees for the timber over the past three to four years.<sup>57</sup> The British were quick to complain about their actions, both in making land sales and in appointing timber agents.

C.R. Vaughan, the British ambassador, lodged a complaint with Henry Clay, the American Secretary of State in mid-November. This news caught Clay by surprise. He indicated to Vaughan that he had no knowledge of these events but would investigate. By January 1826, Clay was able to inform Vaughan that the measures taken by the two states were merely “precautionary” and were not intended to usurp the boundary negotiations between Great Britain and the United States. The matter was closed in June 1826 when Clay informed Vaughan that Massachusetts had placed the Resolves relating to the sale of land and timber permits in abeyance. A *quid pro quo* compromise had been reached in which neither Maine and Massachusetts nor New Brunswick was going to issue timber cutting permits within the disputed territory.<sup>58</sup> With this, the first period of the timber industry within the disputed territory came to an end. It began as a period of friction between Maine and Massachusetts on the one hand and New Brunswick on the other. New Brunswick was granting timber cutting permits on land that Maine and Massachusetts claimed as their own and they wanted it to cease. Following exchanges of letters between Portland, Boston, Washington, Fredericton and

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<sup>57</sup> Maine State Archives. Coffin Journal, 1825. p. 84.

<sup>58</sup> Van Buren. Maine Boundary. pp. 266, 268, 271 and 274-275. House Doc. No. 90. Letters Vaughn to Clay dated November 15, 1825, Clay to Vaughan dated November 25, 1825, Clay to Vaughan dated January 18, 1826 and Clay to Vaughan dated June 23 1826. The Commonwealth of Massachusetts passed the amending Resolve on June 19, 1826. Maine presumably passed a similar resolve.

London, both sides agreed to cease issuing permits to cut timber within the disputed territory, pending a resolution of the boundary controversy.

As can be seen, the development of the timber industry did not follow the model that has been described by Wood, Wynn and Judd. According to them, the first lumbermen or timber cutters were individuals or small partnerships that operated at the local level. Many could be described as “squatter-lumbermen” who combined timber cutting with farming. The next phase saw the transition to larger operations. The lumber camps were run by “master lumberers” with merchants, some smaller and some larger, providing the capital to purchase supplies, pay the men and obtain the permits. Later, after the mid-century point, the larger, capital heavy companies became dominant.<sup>59</sup> However, the growth of the timber industry within the disputed territory did not follow this model. In the first area of settlement, the Madawaska settlement, legal occupation of the land preceded any cutting of timber for export. Agriculture preceded timber making. The settlers would have cut logs to build their homes and barns but not for export. The first recorded commercial lumbering occurred in 1818/1819, some 30 years after the first farms were established. While Pierre Duperré’s operation loosely fits the model, the Nevers/Baker partnership of the same period does not. Because both either had Provincial permits or were presumably cutting on granted lands, this was also a legal activity. The divergence from the model is even more dramatic along the Aroostook River.

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<sup>59</sup> Wood. Lumbering. p. 29, Wynn. Timber Colony. p. 85 and Judd. Aroostook. pp. 8-9.

According to Treat's observations, timber-cutting operations along the Aroostook River had begun circa 1817. This roughly parallels the timeline for the start of this industry in the Madawaska settlement. However, this had not been preceded by settlement. The United States Government and Maine both conducted detailed studies of the Aroostook area in 1828. S.B. Barrell, the United States agent, found that the first settlers had arrived in the Aroostook valley in 1822. By 1828, there were 40 settlers, nine were American and the rest were British.<sup>60</sup> The first lumbermen on the Aroostook were not settlers as, circa 1817/1819, there were no settlers. While the first settlers were squatters and farmers, they perhaps cut some timber as well. However, the information provided to Coffin and Irish by Cook clearly shows that by the winter of 1824/1825, the timber cutting operations were sponsored by St. John River merchants with the camps being under the control of a "master lumberer". Again, this was a second phase industry.

There are a number of reasons why the model does not fit the disputed territory. The model seems to be based on the agricultural and timber frontiers moving outwards from the ports along the river valleys. These frontiers expanded with some degree of synchronization with one or the other taking the lead and, perhaps, even reversing positions depending on the suitability of the land for agriculture or timber cutting. However, the creation of the Madawaska settlement in the late 1780s leapt over both frontiers by placing an agricultural community far up the St. John River, about 150 kilometres from the leading edge of the Loyalist

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<sup>60</sup> Van Buren. Maine Boundary. p. 175. Senate Doc. No. 171. Report of Charles S. Daveis, agent appointed by the Executive of the State of Maine, dated January 31, 1828; p. 55. Senate Doc. No. 130. Report of the Special Agent [for the United States] by S. B. Barrell dated February 11, 1828.

settlements at Woodstock. Later, as the demand for timber grew, the timber frontier expanded up the St. John River. The agricultural frontier also advanced after the end of the War of 1812 with the establishment of military settlements between Woodstock and Grand Falls. However, there were no settlers along the Aroostook River until 1822. Because of the absence of local settlers there, the timber industry needed the sponsorship of merchants to organize, man and supply the operations that started cutting there circa 1817/1819. Clearly, the growth of the timber industry within the disputed territory did not follow the normal pattern of development that was experienced in other parts of New Brunswick and Maine.

#### **The “Cat and Mouse” Years – 1825 to 1837.**

The nature of the timber industry within the disputed territory changed abruptly after 1825. Following the prohibition on timber cutting, which had been agreed to by the five governments that were party to it, the industry became illegal. The cutting of timber continued but it was now what might be called an “underground” economy. Because it was illegal, no permits were issued and few, if any, records were kept. The historical record comes primarily from the archives of the Crown Land Office of New Brunswick and the Land Agents of Maine and Massachusetts. The industry was also wrapped up in the political and diplomatic wrangling as the boundary negotiations continued and Maine became more militant about its claim to all of the disputed territory. As governments discussed the boundary issue, the lumbermen within the disputed territory continued to cut timber. They played a “cat and mouse” game with the officials of New Brunswick, Maine and Massachusetts as they worked to get their timber to market without having it

seized. If they were fortunate, their timber slipped through the nets of the government officials. In most cases, the only consequence of being caught was to have their timber seized and then being required to redeem it by paying a duty on it. It was a gamble worth taking and one that had few consequences other than paying a duty that reduced the margin of profit. The Land Agents of Maine and Massachusetts muddled the waters by either issuing cutting permits along the Aroostook River or intimating that they would be issued, in contravention of the agreement of 1825.

It is not entirely clear when New Brunswick ceased issuing timber permits within the disputed territory. According to Coffin and Irish, this had taken effect starting in the winter of 1825/1826. Clay used this as his reference for pressuring the governors of Maine and Massachusetts to rescind the authorities that they had issued to Bacon and Cook.<sup>61</sup> Certainly, Douglas had been advised to do this by the Earl of Bathurst in late 1825.<sup>62</sup> However, based on the New Brunswick records, this new policy may not have actually taken effect until the winter of 1827/1828. In a Petition dated 1826 to the King from the Council and House of Assembly of New

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<sup>61</sup> *Ibid.* pp. 273-274. House Doc. No. 90. Clay to Levi Lincoln, Governor of Massachusetts dated December 15, 1825. Clay refers to Coffin's report that New Brunswick has "discontinued granting licenses to cut timber" and, on behalf of the President, requests that Massachusetts does the same. p. 271. Clay to Vaughan dated January 18, 1826. Clay states that a similar letter was sent to Maine.

<sup>62</sup> Paradis. *Mercure Papers*. Vol. III, p. 115. Henry Bathurst, the third Earl Bathurst, was Secretary of State for War and the Colonies from 1812-1827. In a letter dated 28 November 1825 to Sir Howard Douglas, he wrote: "You will not abandon any rights of practical sovereignty which may have been exercised in any parts of the disputed district which have been "de facto" opened and located and held as British settlements for any period along the last century or even later, and although it is advisable to abstain from cutting timber on the as yet unoccupied parts of the territory claimed from us by the United States. Until the question be decided, you will equally refuse to recognize any license from that government to cut timber in these districts, but immediately and simply protest against that or any other attempt to exercise authority until you have received further instruction from His Majesty's government on the subject". This is also found in University of New Brunswick (UNB). Loyalist Collection. New Brunswick Despatches Received (FC LPR .N4L5D4) pp. 281-283.



Brunswick, it is mentioned that the permits were [or would be] withdrawn for 1827.<sup>63</sup> In March of 1827, W. F. Odell, the Provincial Secretary, sent a “Circular to the Magistrates in the Upper Part of the County of York, respecting the Disputed Territory”. In view of the conciliatory attitude shown by the United States, he urged them to “use your utmost diligence” to discover any “intruders or trespassers” who were attempting “to make settlements or to procure timber”. If any such persons were found, the Attorney General would take legal action against them. The goal was to maintain the disputed territory in the same state that it was when the Treaty of Ghent was signed.<sup>64</sup> Thomas Baillie, the Surveyor General, was looking for direction on how to apply the new policy. In response to a letter about illegal timber being taken down the Aroostook River, Odell informed him that the Deputy Surveyors were not to “seize or meddle” with any timber that may have been cut in the disputed territory. Once it was removed from the disputed territory, it could be seized once it was in “the acknowledged territory of New Brunswick”. Any proceeds for the sale of the timber were to be put in a fund that would be distributed once the boundary was established. This was the start of the Disputed Territory Fund.<sup>65</sup>

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<sup>63</sup> TNA. CO 188/33 (1826). pp. 31-36. Petition to the King from Council and House of Assembly of NB dated 1 March 1826. The petition asked the King to keep the Madawaska and Aroostook River watersheds in New Brunswick.

<sup>64</sup> Van Buren. Maine Boundary. p. 280. House Doc. No. 90. W.F. Odell in a Circular to the Magistrates in the Upper Part of the County of York, respecting the Disputed Territory dated March 9, 1827. On p. 189, Daveis stated that Douglas had passed an act on the same day the prohibited any further settlement of the Disputed Territory and announced the ban on timber cutting. A search of the PANB records did not reveal an act or a proclamation of that date.

<sup>65</sup> PANB. RS 663 E.1.a. Correspondence, Commissioner of Crown Lands, 1809-1836. Odell to Baillie dated 30 April 1827.

However, the disputed territory did not remain in stasis. The Madawaska settlement was increasing in size through normal population growth and the arrival of immigrants from Lower Canada. From a total of 174 persons in 1790, the population had increased to 1,171 by 1820 and to 2,476 by 1830. During the 1820s, the population was growing at a rate of about 11 per cent per year.<sup>66</sup> There were also more American families moving into the area above the Madawaska settlement. By 1827, it had grown from the original four settlers in 1818 to sixteen, most of who had arrived between 1824 and 1826. As evidenced by the number of sawmills, there was also an increased demand for boards, either for domestic use or export. By 1827, John Baker, Firmin Thibodeau and Louis Bellefleur were operating sawmills, while Nathaniel Bartlette and Daniel Savage were either building or operating a double sawmill for Peters & Wilmot at Fish River.<sup>67</sup> For their part, Maine and Massachusetts were not content to maintain the *status quo*. In October of 1826, Joseph Norris was surveying 65 townships, each six miles square, along the Aroostook River for the two states. Four families had indicated that they were going to take land grants there and an additional 40 to 50 American families were expected to arrive within the next year or so. This was in addition to the 18 settlers who Coffin had recorded in 1825. Meanwhile, an American surveyor, General Joel Wellington, was surveying a road from the Penobscot settlements to the Fish River

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<sup>66</sup> Craig, Backwoods Consumers. P. 248. Appendix 3: Table 1 – Saint John Valley population, 1790-1870.

<sup>67</sup> Van Buren, Maine Boundary. pp. 78-80. Senate Doc. No.130. List of American citizens in possession of lands in Madawaska, quantity, etc. by George Morehouse dated August 11, 1827. Craig, Land In Between. p. 120. Maine State Archives. Coffin Journal, 1825. p. 52. Coffin noted that the mills at Fish River were being built in 1825.

on behalf of Maine.<sup>68</sup> These actions were duly protested by the British government but came to nought as Henry Clay, the American Secretary of State, simply passed them on to the state governors for an explanation, which does not appear to have been provided.<sup>69</sup>

While the population of the disputed territory was rapidly growing, the timber frontier was expanding into it at equal speed. Starting in about 1820, timber licenses were being issued for the Tobique River and, in 1822, River de Chute.<sup>70</sup> These are located on the southeastern edge of the disputed territory. Peter Fisher and George Coffin both observed that, by 1824/1825, the timber near the banks of the Tobique had been “nearly all cut off”.<sup>71</sup> It is unclear what effect, if any, the Miramichi Fire of 1825 had on pushing the timber frontier to the northwest. MacNutt suggests that the “great fire of that year forced the timber frontier northward and Bathurst became a port of consequence”. Wynn does not mention this although he notes that timber exports from the Miramichi were significantly smaller in the following years. He also indicates that this could be due to the results of the fire or to the commercial depression of the late 1820s. However, by the 1830s, the “locus of New Brunswick lumbering had shifted to the northwest of the

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<sup>68</sup> TNA. CO 188/33. pp. 134 – 138. Deposition by George Thibodo dated 18 October 1826 in which he reported on the activities of General Wellington and pp 142 – 144. MacLauchlan to Odell dated 20 October 1826. MacLauchlan gave a report of his meeting with Norris and provided a copy of Norris’s instructions for the survey. Maine State Archives. The Journal of George W Coffin, Massachusetts Land Agent, September and October , 1825. p. 58.

<sup>69</sup> Van Buren. Maine Boundary. pp. 276-277. Vaughan to Clay dated January 16, 1827 and Clay to Vaughan dated January 18, 1827.

<sup>70</sup> PANB. RS 663 b.2.a. Timber Licences 1820 and RS 663 b.2.b. Timber Licences 1824-1829.

<sup>71</sup> Fisher, Peter. The First History of New Brunswick. 1825, 1921 and 1980. Woodstock, NB: Non-Entity Press, 1983. p. 54; and Maine State Archives. The Journal of George W Coffin, Massachusetts Land Agent, September and October , 1825. p. 59.

province”.<sup>72</sup> The reasons notwithstanding, there was an increasing interest in the timber of the disputed territory at the same time that access to it had been cut off by Provincial decree. This gave added incentive to side step the law and cut the timber illegally. There were also two formal diplomatic protests by the American government to Great Britain about the cutting of trespass timber. These protests coincided with the boundary question being submitted to arbitration by the King of the Netherlands and were no doubt designed to advance the American claim, or more accurately, the claims of Maine and Massachusetts. Based on this, the reasonable conclusion is that illegal timber cutting was rampant within the disputed territory. However, the evidence does not support this.

The Maine Land Agent reported that “much less strip and waste, has been made on the Aroostook and St. John” in 1826 and that securities had been received for much of which had been cut.<sup>73</sup> The Report for 1827 indicated “little or no trespass has been committed on the divided, or undivided, lands”. This was attributed to the success of a system introduced to “keep a watch over the timber lands”. While Maine and Massachusetts were coordinating their actions to prevent trespass, there were also indications that their goals were beginning to diverge. Irish observed in his report that Massachusetts was selling timber on their lands, which rendered “the lands belonging to Maine much exposed to depredation”. This was because of the ease with which illegally cut timber could be mixed with the legal

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<sup>72</sup> MacNutt, W.S. “The Politics of the Timber Trade in Colonial New Brunswick, 1825-40”. Canadian Historical Review, Vol. Xxx, No. 1 (March 1949) pp. 47-65. p. 49. Wynn. Timber Colony. pp. 37 and 39.

<sup>73</sup> Google Books. Report of Maine Land Agent for 1826. p. 5.

cut.<sup>74</sup> New Brunswick was also maintaining a presence in the area. George Morehouse was sent to investigate claims of trespassing on the Aroostook in the spring of 1827.<sup>75</sup> Two years later, in October of 1829, the Maine Land Agent commissioned General John Webber to visit the disputed territory and report on the amount of depredations that were occurring. Webber's report indicated that small quantities of white pine were being cut in the Madawaska settlement and sold locally or at Grand Falls and Woodstock. Logs were cut and sawn, presumably for local use, at the mills at Fish River and Baker's. Much the same was happening along the Aroostook River. The Provincial authorities seized some of the ton timber cut while some made it through to market. Dennis Fairbanks was cutting and sawing logs at his mill for local use. In total, about 960 tons of white pine and 230 pine logs had been cut in 1828 and 1829.<sup>76</sup>

Webber's report reflected an entirely different situation from that reported by George W. Coffin, the Massachusetts Land Agent, in the fall of 1828. The land agents of Maine and Massachusetts had both visited the Aroostook River that summer. While the report of the James Irish, the Maine land agent, was benign, that of his counterpart, George W. Coffin, was not.<sup>77</sup> In a letter to Levi Lincoln, Jr., the

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<sup>74</sup> Maine State Archives. Report of the Maine Land Agent for 1827. pp. 2-3.

<sup>75</sup> PANB. RS 663 E.1.a. Correspondence, Commissioner of Crown Lands, 1809-1836. 12 Apr 1827. WF Odell to Geo. Morehouse dated 12 April 1827. If evidence of trespassing was found, Morehouse was to pass the details to the Attorney General for legal action. Odell referred to the circular letter of 9 March 1827.

<sup>76</sup> Maine State Archives. Report of the Maine Land Agent for 1829. pp. 7-9. The cut logs were roughly squared prior to be floated to market and were referred to as either square timber or, because they were sold by the ton, as ton timber. This differentiated them from smaller, saw logs.

<sup>77</sup> Maine Historical Society. QJ 974.104 D282. Senate Doc. No. 9. Report of the Land Agent, James Irish, dated June 16, 1828. This was only a two-page report and was general in nature. The highlight

Governor of Massachusetts, he raised the alarm about mills being erected on the Aroostook and Fish Rivers. He also claimed that New Brunswick officers were encouraging the illegal cutting of timber along the Aroostook River and were condoning the practice of holders of timber permits for Crown lands along the St. John River to trespass on non-Crown land. Lincoln promptly forwarded Coffin's letter to Secretary of State Clay with the observation that it was a poor bargain for Maine and Massachusetts to have voluntarily suspended work on the road to Fish River in response to a British complaint if, in turn, "the land is to be plundered of its timber" by the British. Clay demanded that the British government intervene so that "the friendly, if not peaceful, relations, between the two countries, may be interrupted or endangered".<sup>78</sup> The British response came quickly, at least by mid-19<sup>th</sup> century standards. In March of 1829, Vaughan reported to the Acting Secretary of State, J.A. Hamilton, that Sir Howard Douglas was sending a magistrate to investigate the complaints. In the interim, Thomas Baillie, the Commissioner of Crown Lands, had confirmed that New Brunswick had not granted permission for the building of mills or the cutting of timber within the disputed territory. Vaughan also noted that Douglas was about to depart New Brunswick to help prepare the British case for the submission of the boundary question to the King of the Netherlands for arbitration.<sup>79</sup>

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was that the two land agents had spent \$500 to prevent trespass and had saved a much larger sum by doing so.

<sup>78</sup> Van Buren. Maine Boundary. pp. 11-12. Doc. No. 126. Clay to Vaughan dated January 9, 1829.

<sup>79</sup> Ibid. pp. 12-14. Doc. No. 126. Vaughan to Hamilton dated March 7, 1829 and Baillie to Douglas dated February 11, 1829.

The seriousness of the American complaint sparked a renewed interest by the officials of New Brunswick in the enforcement of the anti-trespassing regulations. In February of 1829, Sir Howard Douglas asked Baillie to nominate someone for the position of Warden of the Disputed Territory. He recommended James A. MacLauchlan, who was appointed by the Lieutenant Governor soon afterwards. MacLauchlan was a good candidate. A former officer of the 104<sup>th</sup> Regiment of Foot, he had served as a Seizing Officer, Deputy Surveyor and Justice of the Peace for almost a decade. In his instructions to MacLauchlan, Baillie said that he was to go to the disputed territory and warn off any people who were cutting timber. He was not to seize or meddle with any timber that had been cut until it arrived “within the acknowledged boundary of New Brunswick”. Then, he was to seize it and report his actions to Baillie. The proceeds of any sale or redemptions were to be put in trust, i.e. the Disputed Territory Fund. MacLauchlan’s salary was to be £1 per day plus travelling expenses.<sup>80</sup> His first task as Warden was to investigate Coffin’s complaint.

MacLauchlan’s report was passed to Martin Van Buren, the new American Secretary of State, in June of 1829. As part of his investigations, MacLauchlan had the survey line that ran north from the Monument to the St. John River re-blazed for much of the way between Woodstock and the St. John River, as it was difficult to locate. He found that Dennis Fairbanks, an American, owned the only sawmill on the Aroostook River. Fairbanks had “indirect permission” from the Maine and

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<sup>80</sup> PANB. RS 663 E.1.a. Correspondence, Commissioner of Crown Lands, 1809-1836. Baillie to Sir Howard Douglas dated 5 February 1829 and Baillie to MacLauchlan dated 13 February 1829.

Massachusetts land agents to procure timber for his mill. He was also appointed by Maine to act as an assistant land agent to record the quantity of timber cut along the Aroostook. There were 30 settlers along the river; nine Americans and the rest were British. Most of them had lost their land along the St. John River for “debts incurred by lumbering”. They had thought that they were beyond the reach of British law, which MacLauchlan opined was not true. In the Madawaska settlement, he found that it had been Americans, except for one Canadian from Quebec, who had done the illegal cutting. There were two sawmills, one operated by John Baker at Baker Brook and the other by Daniel Savage and Nathaniel Bartlett at Fish River. MacLauchlan concluded his report by speculating that the Americans in the Madawaska settlement also had received “indirect permission” from Maine and/or Massachusetts to cut timber.<sup>81</sup>

Based on this report, and the “conniving conduct of the *land agents* of Massachusetts and Maine”, William Black, the Provincial Administrator, suggested that the American government appoint an official to act as MacLauchlan’s counterpart to prevent the depredations on the timber and to keep the two northeastern states in check. The American government did not act on this suggestion although Vaughan recommended it to Van Buren.<sup>82</sup> However, the American complaint had been effective. Whatever the levels of trespass timber cutting had been in the fall of 1828, they had been greatly reduced by the fall of

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<sup>81</sup> Van Buren, Maine Boundary, pp. 21-22. Doc. No. 126. MacLauchlan to Baillie dated April 14, 1829.

<sup>82</sup> Ibid. pp. 19-20. Doc. No. 126. Vaughan to Van Buren dated June 8, 1829 and Black to Vaughan dated May 11, 1829.



1829. If there was some embarrassment on the part of Massachusetts when it was learned that most of the perpetrators of the depredations were American citizens, this has not been recorded. The actions of the land agents of Maine and Massachusetts in giving subtle encouragement to the cutting of trespass timber should also have been a concern. Presumably, this had the approval of the two states as part of their plan to confirm their claims to the disputed territory. It is also possible that Coffin meant to embarrass the British government as preparations were entering their final stages for submission of the boundary question to arbitration by the King of the Netherlands. In any case, the events of 1829 ushered in a period of relative calm and stability for the next decade.

Because there was a moratorium on timber cutting in the disputed territory and any cutting that was done was illegal, there are no detailed records for this period. Some insight can be gleaned from the Surveyor General records and the annual reports of the Maine Land agents. However, they can be confusing and contradictory. Webber's report of 1829 stated that the inhabitants of the Madawaska settlement were not making preparations to cut in the winter of 1829/1830 as the British were seizing "all the timber that ... ran over the Grand falls".<sup>83</sup> The new Maine Land Agent, W.P. Norton, had Webber return to the disputed territory the next summer. Based on Webber's report and other information, Norton was greatly concerned about the large quantity of timber that was being cut on the headwaters of the Restigouche, which was in the disputed territory, and run to the Bay of Chaleur. He stated that the depredations continued on the Upper St. John and Aroostook

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<sup>83</sup> Report of the Maine Land Agent for 1829. p. 11.

Rivers but on a smaller scale. Norton believed that the Provincial authorities were helping to facilitate this. He claimed that permits were being issued “to run timber manufactured above the grand falls for about 50 cents per thousand”. Other timber and boards were being seized. The fact that the same persons were continuing to run timber and boards convinced Norton that “these seizures are made for the benefit of the trespassers themselves; and that they receive the avails of their depredations”. He also believed that timber permits were being deliberately issued close to the “boundary line” which encouraged the permit holders to cross the line and cut trespass timber.<sup>84</sup>

It would appear that Webber and Norton were objecting to the legal sale of timber from the Upper St. John River. The permit fee of 50 cents per thousand roughly equates to the permit fee of one shilling per ton.<sup>85</sup> However, their observations about the location of the timber berths had merit. If correct, it was conducive to the illegal cutting of timber. The Crown Land office was aware of this and did take precautions to prevent it. In 1834, Mr. A.S. Cayman was licensed to cut 2,000 tons of white pine (TWP) on Little River, a tributary of the Aroostook River. As the berth might extend across the line into the disputed territory, the Deputy Commissioner, John A. Beckwith, instructed MacLauchlan to mark the line

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<sup>84</sup> Maine State Archives. Report of the Maine Land Agent for 1830. p. 7.

<sup>85</sup> Craig. The Land In Between. p. 363. The rate of exchange was fixed in 1821 at 5 shillings to the American dollar. Therefore one shilling equals 20 cents. A thousand board feet equals 2.08 tons (One board foot is  $12 \times 12 \times 1 = 144$  cubic inches. One ton is  $12 \times 12 \times (40 \times 12) = 69,120$  cubic inches) or 480 board feet. There are 2.08 tons to a thousand board feet. At 50 cents per thousand board feet, this equates to 24 cents per ton or slightly over one shilling. . MacNutt. “The Politics of the Timber Trade”. p. 59. Timber permits were being sold for one shilling per ton in 1830.

and do a preliminary survey to ensure that encroachment did not occur.<sup>86</sup> However, the opportunity to stray across the line was great and no doubt more instances went undetected than were discovered. Norton and Webber would also have had cause for complaint about the lenient attitude of the Crown Land Office regarding cutting timber within the disputed territory. In early 1830, Baillie had authorized Mr. McGraw and Mr. George Woods to cut 90 trees, or about 250 tons of timber, on the Aroostook. In turn, they had agreed to pay the duty on this wood. The seeming ease by which lumbermen could export timber from the disputed territory upon payment of the duty did nothing to hinder this activity.<sup>87</sup>

Immediately following news of the unsatisfactory arbitration by the King of the Netherlands, Samuel E. Smith, the Governor of Maine, sent John G. Deane and Edward Kavanagh to survey the disputed territory in July and August of 1831. While their observations are tainted by their unwavering support for Maine's claim, their report does contain some interesting information. They first visited the Madawaska settlement where MacLauchlan met and accompanied them while they were in the settlement. They confirmed that the British had not issued any timber licenses after 1826/1827. The only mention of recent timber cutting concerned a quantity of timber that had been cut up river on the Allagash and that the British authorities had allowed to pass over the falls before it was seized. They did confirm that settlers were allowed to cut timber on granted lands. There were two sawmills

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<sup>86</sup> PANB. RS 637. 1.a.6. Surveyor General Letterbook, 1834-1836. p. 132. Beckwith to MacLauchlan dated 11 September 1834.

<sup>87</sup> PANB. RS 663 E.1.a. Correspondence, Commissioner of Crown Lands, 1809-1836. MacLauchlan to Baillie dated March 20, 1830.

in operation that were cutting boards for local use. They then went to the Aroostook and said much the same things. The settlers were “sober, discreet and industrious” and no current timber operations were reported. Two New Brunswick businessmen held property on the upper reaches of the Aroostook where timber cutting had occurred. They were John Black, the brother of William Black, the Provincial Administrator, and Samuel Nevers, Jr. This is significant because it indicates that the St. John River merchants still had a toehold along the Aroostook River. After leaving the Aroostook, they spent a night at Mr. Tibbitts near Andover. In a parting shot, they stated that Tibbitts had been cutting timber along the line under British permits and that “it is highly probable, that he ... has been trespassing on Maine”.<sup>88</sup>

The New Brunswick government reacted promptly to reports of trespassing in early 1832. This was despite the notices forbidding this that MacLauchlan had posted in November of 1831.<sup>89</sup> On the orders of Sir Archibald Campbell, the Lieutenant Governor, Acting Commissioner John A. Beckwith sent Deputy Commissioner B. R. Jouett to investigate. He was to seize all timber and lumber cut in the disputed territory and record the names of any British subjects involved so they could be prosecuted. Jouett was to proceed first to Houlton to advise the magistrates there of his mission. In addition to the courtesy notification, he may also have wanted their assistance in prosecuting any American citizens who were

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<sup>88</sup> Raymond, W.O., ed. “Report by Messrs. Deane and Kavnagh”. Collections of the New Brunswick Historical Society, Number 9 (1914), 386-462. pp. 459, 467, 468 and 475. While they did not specify which Tibbetts was involved, it was probably either James or Benjamin. Both lived in the Andover area and were involved in the timber industry.

<sup>89</sup> PANB. RS 637. 13.f.5. A copy of the notice that was posted by MacLauchlan dated 9 November 1831.

involved in cutting trespass timber. Jouett met Dennis Fairbanks, a deputy land agent for the state of Maine, at River de Chutes and they proceeded together up the Aroostook River. He found 14 crews totalling 37 men at work. They were settlers who were “wretchedly poor”. They were cutting small quantities of pine ranging from 20 to 160 tons per crew. Jouett seized the timber and, after being warned, the lumbermen stopped work. Apparently, they had been informed that the boundary question had been settled and that they would have no difficulty in obtaining licences from whatever government owned the land. Jouett also seized some timber that Fairbanks had previously seized but that “the squatters paid no attention thereto”.<sup>90</sup> In the Madawaska settlement, he found that the settlers had been legally cutting timber on granted lands. The only trespass timber found was 70 to 80 tons that belonged to John Baker, which was seized.<sup>91</sup> Beckwith later informed the Aroostook settlers that they would not be prosecuted if they did not move the timber. Subsequent to this, some timber was removed. Most of it was seized and sold for between three and nine shillings per ton. Prosecutions were initiated but were not completed due to the “extreme indigence of the trespassers”.<sup>92</sup> For some reason, James A. MacLauchlan, the Warden of the Disputed Territory, was not involved in this investigation. Perhaps it was thought to have required a higher profile officer of the Crown Land office to conduct it.

Events in the disputed territory gained international importance in 1833 when MacLauchlan complained about the activities of the land agents of Maine and

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<sup>90</sup> Van Buren. Maine Boundary. p. 48. Doc. No. 126. Jouett to Beckwith dated January 16, 1834.

<sup>91</sup> Ibid. pp. 43-47. Doc. No. 126. Jouett to Beckwith dated March 20, 1832.

<sup>92</sup> Ibid. pp. 41-42. Doc. No. 126. Beckwith to Campbell dated January 18, 1834.

Massachusetts. He first reported that the only timber being cut was small quantities by the settlers on the Aroostook who were using it for the support of their families after having had two years of crop failures due to early frosts. Then he went on to say that the land agents of Maine and Massachusetts had held out “inducements to the subjects of both countries to cut pine timber ... by paying them a duty of two shillings and six pence a ton”. The agents had also entered into contracts to build two roads to intersect the Aroostook River.<sup>93</sup> Louis McLane, the American Secretary of State, received this report less than a month later.<sup>94</sup> McLane’s response, based on replies received from the Governors of Maine and Massachusetts, was to deny that the roads would enter the disputed territory. He countered by saying that New Brunswick had first violated the understanding by seizing timber that had already been seized by Massachusetts.<sup>95</sup> This referred to Jouetts’ seizure of the timber that had been previously seized by Fairbanks in 1832. These claims and counterclaims were part of the positioning for control of the disputed territory by Maine, Massachusetts and New Brunswick. While they did not change the motives or actions of these three governments, they may have been effective in reducing the cutting of trespass timber.

The events of 1833 seem to have ushered in a period of better cooperation between Maine, Massachusetts and New Brunswick. In his report for 1834, Maine Land Agent John Hodgdon reported that there had been very little trespassing within the disputed territory during the past two years. One party of New Brunswick

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<sup>93</sup> *Ibid.* pp. 31-32. Doc. No. 126. MacLauchlan to Campbell dated September 28, 1833.

<sup>94</sup> *Ibid.* p. 30. Doc. No. 126. Vaughan to McLane dated October 20, 1833.

<sup>95</sup> *Ibid.* pp. 34-35. Doc. No. 126. McLane to Vaughan dated December 21, 1833.

lumbermen led by Henry Jones had been arrested near the future site of Fort Fairfield. They were taken to Houlton and their teams were sold at auction for \$600. The lumbermen were not prosecuted, as it was later believed that they may have accidentally crossed the line and the loss of their teams was sufficient punishment. Hodgdon had visited the disputed territory in May of 1834 and met with MacLauchlan at Tobique. From this meeting, Hodgdon learned that New Brunswick had not issued any cutting permits within the disputed territory and that any timber coming out of it would be seized. The inhabitants of the Aroostook River cut the only timber that was allowed out and this was due to their poverty that had been caused by poor harvests. MacLauchlan estimated that only 4,000 tons of trespass timber had been cut along the Aroostook and 2,000 above Grand Falls. Any money collected in fines or from auction was placed in the Disputed Territory Fund. In a demonstration of cooperation, the representatives of Maine, Massachusetts and New Brunswick had posted notices prohibiting the cutting of timber.<sup>96</sup>

Notwithstanding these efforts, it would appear that St. John River merchants were still involved in some of the cutting of trespass timber. Earlier in 1834, MacLauchlan had taken bonds in his own name in the amount of £300 (which at 8/ per ton equalled about 750 tons) for timber that had been cut on the Aroostook and subsequently seized. This came to light in the fall when, after the timber had reached market in Saint John, the owners challenged the authority of the bonds. Perhaps they hoped to have their bonds returned. Baillie instructed B.R. Jouett to seize the timber and to take new bonds if the owners could not prove that it was

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<sup>96</sup> Maine State Library. Land Agents Report, State of Maine, 1834. pp. 3, 4 ,13 and 14.

legally cut. There is no follow up to this in the files so it is not known how the case ended or who the owners were. However, this link between the cutting on the Aroostook and the markets in Saint John strongly suggests that Saint John River merchants were involved in the cutting as the poor settlers on the Aroostook would not have been capable of having a presence in the Saint John market.<sup>97</sup>

Hodgdon's report for 1835 was less optimistic. He had visited the disputed territory in the early fall along with George W. Coffin, the Massachusetts Land Agent. The two states were continuing to build the "Restook Road" (Maine Highway 11) despite the objections from New Brunswick. Based on his visit, he believed that the inhabitants "are all directly interested in trespassing, and will attempt it at all hazards". Apparently a large quantity of timber had come down the St. John River in the spring with no interference. When Hodgdon visited the Crown Land Office in Fredericton to complain, he was told that no timber had been permitted to enter the Province from the disputed territory except that "cut upon old grants or within the jurisdiction of Canada". He believed that this "opened a door for numerous abuses", such as a fraudulent Magistrate's certificate that stated where the timber was cut or mixing in illegal timber with the legal timber. He had also heard cases of timber rafts being smuggled past seizing officers in the night. However, for all of this, Hodgdon estimated that the amount of timber taken out of the disputed territory to be "not less than four thousand tons". He also credited the British authorities with having done their best to curb the illegal cutting. To support

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<sup>97</sup> RS 637. 1.a.6. Correspondence, Commissioner of Crown Lands, 1809-1836. pp. 163 and 174. Baillie to Campbell dated 24 October 1834 and Baillie to Jouett dated 1 November 1834.



this statement, he mentioned that the Warden had recently visited the Aroostook and warned the men in the lumber camps that, if they cut during up coming winter, their timber would be seized and burnt. Maine and Massachusetts had long been advocating that, besides seizing the timber, the lumbermen should be arrested and their teams confiscated. The New Brunswick approach had been to warn the lumbermen first and then seize the timber when it entered the acknowledged boundaries of the Province. It now appeared that New Brunswick was moving towards a firmer policy.<sup>98</sup>

However, the situation was beginning to change. Hodgdon mentioned in his 1835 report that “the lumber in the other New England States was exhausted” and that the stumpage fees “had risen from one to four or five dollars a hundred [board feet].”<sup>99</sup> The following year, Hodgdon commented in his report that the “price of timber ...[was]...steadily rising”. He added that as the “Atlantic cities and manufacturing villages depend almost entirely upon Maine for their white pine, it must still continue to advance”.<sup>100</sup> These opinions were reflected in the quantities of timber that were exported through the port of Saint John. While fluctuating, the quantities had been declining since the peak in 1825 until 1833 when they began an upward trend.<sup>101</sup> The fluctuations reflected the international economy: concerns over proposed reductions to the British preferential duty on timber, the depression of

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<sup>98</sup> Maine Legislative and Law Library. Land Agent’s Report, State of Maine, 1835. pp. 13, 17 and to 22.

<sup>99</sup> *Ibid.* p. 13.

<sup>100</sup> Fogler Library, University of Maine at Orono. Land Agent’s Report, State of Maine, 1836. pp. 11 to 13.

<sup>101</sup> Craig. *Backwoods Consumers*. p. 82. Figure 2. Quantities of timber and lumber exported from the port of Saint John, 1821-1844. In thousands of tons: 1833 – 185, 1834 – 195, 1835 – 278, 1836 – 219, 1837 – 222, 1838 – 269, 1839 – 251, 1840 – 261 and 1841 – 221.

1837 and the growth in British railway building all caused the demand for timber to rise and fall.<sup>102</sup> However, the overall trend showed an increased demand for timber in the last half of the 1830s. There was also a growing demand for sawn boards. Sir John Caldwell, the disgraced Receiver General of Lower Canada, settled in Grand Falls circa 1830. He received timber reserves from the New Brunswick government and began to build a large sawmill at the falls.<sup>103</sup> As the demand for timber and saw logs increased, timber cruisers and New Brunswick merchants began to look increasingly towards the disputed territory for sources of white pine.<sup>104</sup>

Notwithstanding the rising demand for timber, the amount of trespassing did not appear to increase. In his report of 1836, Hodgdon stated that there had been “very little” trespass except within the disputed territory.<sup>105</sup> His report for 1837 simply mentions that the usual amount of trespass had occurred in the past year. This was despite the best efforts by the British authorities to prevent it.<sup>106</sup> According to the Warden, about 2,000 tons had been cut on the Aroostook and between 1,000 and 1,500 tons in the Madawaska region.<sup>107</sup> However, there was

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<sup>102</sup> Wynn. *Timber Colony*. p. 50.

<sup>103</sup> Héroux, Andrée. “Sir John Caldwell. *Dictionary of Canadian Biography*. Vol. VII (1836-1850). Toronto: University of Toronto Press, 1988. pp. 133-136. Interestingly, this entry does not mention his activities in New Brunswick. Conversation on 2 September 2009 with Patrick McCooey, President of the Grand Fall Historical Society. Caldwell arrived in Grand Falls in 1830 and proceeded to build his mill. PANB. RS 637. 1.a.6. Letterbook. 1834-1836 p. 257. Beckwith to various dated 1 June 1835. MacLauchlan was to survey timber berths on the Little Salmon River and others located above Caldwell’s reserve near Grand River.

<sup>104</sup> MacNutt. W.S. *New Brunswick, A History: 1784-1867*. Toronto: Macmillan of Canada, 1984. p. 241.

<sup>105</sup> Fogler Library, University of Maine at Orono. Land Agent’s Report, State of Maine, 1836. pp. 11 to 12.

<sup>106</sup> Main State Library. Land Agent’s Report, State of Maine, 1837. p. 7.

<sup>107</sup> UNB. Loyalist Collection. New Brunswick Lieutenant Governor (NBLG). Vol. XVII – Despatches Received 1837. p. 655. MacLauchlan to Campbell dated 17 April 1837. Concerning trespass timber, 2,000 ton had been cut on the Aroostook with about 1500 tons remaining from the

more evidence of increased interest in the timber of the disputed territory by the St. John River merchants. In 1836, Rufus S. Demill, a Woodstock merchant, had 57 tons of timber seized by MacLauchlan on the grounds that it was “Restock” timber. It was released to him upon payment of a duty of 20 shillings per ton. He had difficulty in paying the duty and a lawsuit was initiated against him. In April of 1838, Demill petitioned the Lieutenant Governor in Council to have the duty reduced to eight shillings per ton, which he stated was the normal duty on trespass timber, and the balance refunded to him. In his defence, he claimed that he was an innocent party and that the guilty ones were the lumbermen who had actually cut the timber. His plea was denied.<sup>108</sup> This case indicates that St. John River merchants were engaged in lumbering within the disputed territory. The punishing duty of 20 shillings per ton – two and a half times the normal duty for trespass timber – was intended to act as deterrence to him and to others like him.<sup>109</sup> This became part of a new initiative against the cutting of trespass timber. Sir John Harvey became the new Lieutenant Governor of New Brunswick in the summer of 1837. One of his earliest actions was to issue a proclamation that prohibited the cutting of timber within the disputed territory; he promised to prosecute violators “to the utmost extremity if the law” and authorized the Warden to “take all measures within his

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last year. At Madawaska, between 1,000 and 1,500 tons had been cut with 500 tons remaining from the previous year. There was only a trifling amount cut between Mars Hill and Grand Falls while there were some others cutting around River du Chute. He named George Morehouse, Justus Wright, George Noble, John Ackerman and Michael Lasseur as some of the cutters.

<sup>108</sup> PANB. RS 6. c. 1838. Petition by Rufus S. Demill, merchant of Woodstock, dated April 1838.

<sup>109</sup> PANB. RS 637. 1.a.9. Surveyor General Letterbook. p. 81. 21 Nov 1836. Baillie to Sir Archibald Campbell dated 21 November 1836. Baillie suggests that the duties on trespass timber should be twenty shillings per ton. P115-116. . 1 Aug 1837. Baillie to Harvey dated 1 August 1837. Baillie again recommended a duty of 20 shillings per ton vice the normal fee of eight shillings per ton, as it would be more likely to discourage the illegal cutting of timber.

power” to detect and report any offenders.<sup>110</sup> Whether or not these measures were effective is unknown. However, when the timber boom reached the disputed territory in 1838, no amount of deterrence would be effective, other than brute force.<sup>111</sup>

The period from 1825 to 1837 saw an almost complete change in the nature of the timber industry within the disputed territory. With the moratorium on timber cutting taking effect and a downturn in the demand for timber, the St. John River merchants essentially left the industry. While there is some evidence of commercial cutting, most of it was done by the inhabitants of the region. The industry had regressed to being a first phase one based on small cutting operations, each involving one or more of the settlers. This is certainly an unusual, if not unique, development. With the land agents of Maine and Massachusetts, along with the Deputy Surveyors of New Brunswick, frequently patrolling the disputed territory, the quantity of trespass timber cut decreased dramatically. Much of what was cut was done with quasi-official permission by the settlers who needed to sell the timber to purchase necessities for their families. Other relief efforts designed to offset the effects of a series of poor harvests paralleled this humanitarian response by the New

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<sup>110</sup> PANB. RS 344/G.1. Proclamations 1837. Proclamation concerning the cutting of trespass timber dated 6 July 1837.

<sup>111</sup> Maine State Archives. 2120 7-9, Diary and Letter Book of William Parrott. p. 49. There is other evidence of the effectiveness of the British authorities in preventing the cutting of trespass timber during part of this period. On August 28, 1839, Mr. George Grantham stated that he had been involved in cutting timber along the Aroostook River and that he estimated the amount cut annually was: 1833 – 16,000 tons at least, 1834 – 1,000 tons, 1835 – 1,000 tons, 1836 – 7,000 tons and 1837 – 7,000 tons. The reason for the small amounts in 1834 and 1835 was the proclamations against cutting that had been issued by the New Brunswick government.

Brunswick government.<sup>112</sup> As the mid-1830s approached, there is evidence to suggest that the St. John River merchants were again taking an interest in the timber of the disputed territory. Most of this is circumstantial evidence as the surviving records only hint at this.

The interactions between the land agents of Maine and Massachusetts and the Deputy Surveyors of New Brunswick reflected both friction and cooperation. The friction mainly came from the actions of Maine and Massachusetts to establish control within the disputed territory by opening roads into it from the south, by surveying settling lands and selling timber cutting permits. While this was counter to the agreement or understanding between the United States government and Great Britain, it was in accordance with the agenda of the two states. However, the British were also improving roads within the disputed territory and, while not encouraging the expansion of settlement, were content to allow it to happen. The American land agents also had a different opinion about what constituted trespass timber. For them, all timber cut within the maximum limits of the disputed territory was trespass. However, the British stance was that timber coming down the St. John River from the Lake Temiscouata region of Lower Canada [Quebec] was legal. The land agents and the Warden of the Disputed Territory were able to cooperate on many occasions by jointly posting no cutting notices and inspecting the region for evidence of illegal cutting. They were also able to cooperate in detecting and seizing trespass timber. However, the differing approaches towards enforcement also created friction and facilitated the cutting of trespass timber. The British policy was to warn the

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<sup>112</sup> Craig, Land In Between. p. 80.

lumbermen not to cut timber illegally but to only take action to seize the timber after it had entered the acknowledged boundaries of New Brunswick. The New Brunswick Crown Land Office also had a lenient attitude towards those who were cutting trespass timber and usually allowed the owners to redeem seized timber upon payment of a fine or duty. It was not until 1835 that the British again began to seize timber within the disputed territory, having not done so since the 1825 to 1827 period. The British approach frustrated the land agents of Maine and Massachusetts. They would have preferred to not only seize the timber *in situ* but to arrest the lumbermen and impound their teams. They were prevented from doing this by the remoteness of the disputed territory and the lack of American settlers who they thought would support the land agents in these actions. And so, in this area of conflicting and overlapping jurisdictions, some lumbermen were able to successfully play “cat and mouse” with the authorities and take their illegally cut timber to market.

#### **The Aroostook War – 1838-1839.**

The timber industry within the disputed territory became a pawn in the diplomatic negotiations between the United States and Great Britain concerning the course of the international border. Following the American rejection of the 1831 arbitration of the King of the Netherlands, Great Britain and the United States were again discussing the boundary issue. This time the British were suggesting a “conventional” line, perhaps based on the Upper St. John River, while the Americans wanted yet another survey based on the 1783 Treaty of Paris. Maine promptly rejected any consideration of a conventional line but the fact that the

subject had been broached must have caused great concern. Maine was steadfast in its claim to all of the disputed territory and was not prepared to give up any of its claim.<sup>113</sup> In addition, reports were being received that the lumbermen were making plans for a steep increase in the amount of timber to be cut within the disputed territory during the coming winter of 1838/1839. A “perfect storm” of events was building up that would result in what become known as the Aroostook War.

The crisis came on quickly and unexpectedly. In April of 1838, Elijah L. Hamlin, the Maine Land Agent, sent Ebenezer Webster to examine “the Public Lands upon the St. John and Aroostook Rivers” and to report on the amount of trespass that had occurred during the past winter. He found about 1,000 tons of timber along the banks of the St. John River above and within 12 miles of the boundary line. One cutter, “Deboys, a Frenchman”, had been “supplied by Messrs. Smith and Upham of Woodstock”. Farther upriver, he learned that five crews had cut about 3,000 tons along the St. John River above the mouth of the St. Francis. The leaders of the crews were a mix of Acadians from the Madawaska settlement, Americans and New Brunswickers. It was the same along the Aroostook. A number of crews, mainly composed of settlers and men from the Province, had cut about 3,400 tons. Webster estimated that at least 10,000 tons had been cut during the past winter. This was in addition to the cutting that was taking place on the Seignory at

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<sup>113</sup> Irish University Press. British Parliamentary Papers, United States of America, Volume 11/ Canada Relations (BPP/USA/CR). Shannon: Irish University Press, 1972. pp. 352 to 354, 356 to 358 and 341 to 344. British Ambassador Henry S. Fox to American Secretary of State John Forsyth dated January 10, 1838, Forsyth to Fox dated February 7, 1838, Report of the [Maine] Joint Select Committee on the North Eastern Boundary, n.d. but March 1838 and Resolves of the State of Maine dated March 23, 1838.

Lake Temiscouata. To add even more complications to the situation, Harvey had renewed the authorization for Madawaska residents to cut between 80 and 100 tons for timber per year and to legally sell it in order to purchase necessary items for their families.<sup>114</sup> Webster also learned that the St. John River merchants were sponsoring many of the lumber camps. While he noted that the Warden did warn off trespassers, he also observed that they were ignoring MacLauchlan. In the spring, the trespassers floated their timber out of the disputed territory, mixed it with “Province” or legal timber and rafted it to market.<sup>115</sup>

This information confirms the re-emergence of the St. John River merchants in the timber industry of the disputed territory. While the quantity of trespass timber had increased about 250 percent from the previous year, it still only amounted to about 10,000 tons. He also confirmed the method by which timber was smuggled out of the disputed territory and inability of the British officials to prevent this. Webster’s key observation was, “I understand that the lumbermen are making great calculations to cut timber on the disputed territory the ensuing season, as it was likely to bear a high price in the Province”. This intelligence caused the land agents of Maine and Massachusetts “to appoint an Agent to remain on the Aroostook River during the winter ... to prevent ... the timber from further depredation”. Hamlin, accompanied by George W. Buckmore who had been appointed as the joint Agent,

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<sup>114</sup> Library and Archives Canada (LAC). MG9 A2 Vol. 6&7. Vol. 6, Pt 2 1831-1842. Monsignor Antoine Langevin, the Roman Catholic priest at Madawaska, to Harvey dated 7 September 1838. Langevin asked for confirmation that the permission given in 1837 was still in effect. He also wanted to know if they were restricted to cutting and selling saw logs to Sir John Caldwell or if they could send their logs to Fredericton where the market would be better. It would appear that Caldwell was benefiting from a monopoly situation.

<sup>115</sup> UNB. Land Agent’s Report, State of Maine, 1838. pp. 41 to 44.



visited the Aroostook River in October. They found several crews beginning to set up camps and starting to cut timber. All of them, after receiving their warnings, indicated that they were going to cease operations. Hamlin estimated that their actions had prevented the illegal cutting of 10,000 to 15,000 tons of timber. Many of the displaced lumbermen relocated to the headwaters of the Aroostook River where Massachusetts had sold permits to cut timber. New Brunswick was also active in warning off trespassers and seizing suspect timber.<sup>116</sup> Hamlin met MacLauchlan, who had a crew of six men, about 10 miles west of the boundary line. MacLauchlan's mission was "to drive off trespassers, and if necessary, to cut up their timber". All of these actions, plus Buckmore's presence over the coming winter, led Hamlin to conclude, "the Townships on this river [Aroostook] will be effectively protected from further depredations".<sup>117</sup> This was not to be.

In compliance with his instructions, Buckmore returned to the disputed territory in December. He found the Upper St. John River and its tributaries, plus the headwaters of the Restigouche, to be full of lumber camps. There were six large and several small crews on the Fish River, nine crews along the St. John between the St. Francis and the Madawaska plus more on the St. Francis, Madawaska and Grand Rivers. Some of the crews were supplied by Mr. Ketchum of Woodstock, Francis Rice and Leonard R. Coombes of the Madawaska settlement and Sir John Caldwell

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<sup>116</sup> PANB. RS 637. 1.a.8. Letterbook. 1838-1841. pp. 2-3. 10 March 1838. Baillie to nine Deputy Surveyors dated 10 March 1838. As per an Order in Council, they were to step up the timber inspections. Deputies would now receive one quarter of all double duties and Seizing Officer would receive one third of the proceeds from the sale of seized timber. RS 637. 1.a.9. Letterbook. pp. 217/218. 10 Aug 1838. Baillie to Tho. E. Perley of Woodstock dated 10 August 1838. Baillie believed that some of the timber in Perley's raft had been cut in the Disputed Territory and it will be detained pending an investigation.

<sup>117</sup> UNB. Agent's Report, State of Maine, 1838. pp. 4, 7 and 8.

of Grand Falls. Ironically, Rice and Coombes, in their role as magistrates, had challenged Buckmore about his presence in the Madawaska settlement. Buckmore estimated that at least 75,000 tons of timber would be cut along the Upper St. John River that winter, of which about 25,000 tons would be cut on the Fish River. There was a similar situation along the Aroostook River. The trespassers had returned and now had a belligerent attitude. They were prepared to resist any attempts to drive them off. Buckmore estimated that 15,000 to 20,000 tons would be cut along the Little Madawaska River, a tributary of the Aroostook River, alone that winter. Because he was unable to stop the trespassers, Buckmore returned to Augusta and gave his report to Hamlin.<sup>118</sup> Hamlin forwarded it to the Governor in Council the same day with the recommendation that “nothing short of an armed force” could break up the trespassers. The next day, newly elected Governor John Fairfield sent the report to the Senate and House of Representatives of Maine. He endorsed Hamlin’s recommendation and suggested that the land agent focus on the Aroostook River and, if practical, the Fish River. Meeting in secret session, so as not to prematurely announce their actions, the Maine legislature passed a resolve on 23 January that authorized the newly appointed Land Agent, Rufus McIntire, to use sufficient force to break up the trespassers.<sup>119</sup> The Aroostook War had begun.

The Aroostook War has been described as a “lumberman’s war”.<sup>120</sup> Other names, such as the “Pork and Beans War”, have been used.<sup>121</sup> It has also been

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<sup>118</sup> BPP/USA/CR, pp. 483 to 484. Buckmore to Hamlin dated January 22, 1839.

<sup>119</sup> Ibid. p. 382 to 383. Fairfield to the Senate and House of Representatives dated January 23, 1839 and Resolve relating to trespass upon the public lands dated January 23, 1839.

<sup>120</sup> Judd, Aroostook, p. 22.

characterized as a struggle between the “Red Shirts” of Maine and the “Blue Noses” of New Brunswick.<sup>122</sup> While there were other, wider-ranging issues behind the events that led to the Aroostook War, the involvement of lumbermen in the border dispute has not been examined in detail. In 1983, Richard Judd wrote that the “war has yet to be described from the perspective of the lumberman”.<sup>123</sup> As far as is known, this still has not been done. When looking at the “war” even briefly from the lumberman’s perspective, it becomes clear that, at least at the local level, the majority of key individuals involved were engaged in the lumber industry to some degree and that timber was the immediate motivating factor in this border crisis.

While the lumbermen were motivated by the possibility of making money from the sale of timber, the Maine government was equally anxious to receive the revenue from the sale of timber cutting permits. When Fairfield sent his the report to the Senate and House of Representatives of Maine on 23 January, he stated that the illegally cut timber would have a value of \$100,000. This is roughly the amount that would have been received had cutting permits been sold for this timber.<sup>124</sup> This was a large amount of money that Maine could not afford to loose as its public debt has been growing rapidly. From \$43,000 in 1832, it had grown to \$281,000 by 1837, almost doubled to \$584,000 in 1838 and was continuing to rapidly increase.

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<sup>121</sup> Carroll, Francis M. A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842. Toronto: University of Toronto Press, 2001. p. 208.

<sup>122</sup> Jones, Howard and Donald A. Rakestraw. Prologue to Manifest Destiny: Anglo-American Relations in the 1840s. Wilmington, Delaware: Scholarly Resources, Inc., 1997. p. 11

<sup>123</sup> Judd. “Timber Down the St. John”. p. 214.

<sup>124</sup> BPP/USA/CR, p. 382 to 383. Fairfield to the Senate and House of Representatives dated January 23, 1839. UNB. Report of the Maine Land Agent for 1839. p. 17. Cutting permits were being sold for between \$2.00 and \$5.22 per thousand board feet. At the lower rate, this equates to \$1.00 per ton and the estimated amount of trespass timber that would be cut in the winter of 1838/1839 was about 100,000 tons. See footnote 85.

In his report for 1837, the State Treasurer indicated that the reasons for this growing debt were “the great falling off in the receipts of the Land Agent”, the suspension of the State Tax and the appropriation of the Bank Tax.<sup>125</sup> Maine had tied its financial future to the boom in land speculation and the greatly increased income from land sales. When the boom broke about 1836, the land office was left holding notes for the purchase of land that were the equivalent of “toxic debt”.<sup>126</sup> The situation worsened as a result of bank failures and a financial depression that started in 1838.<sup>127</sup> Maine needed to ensure that it received its share of the revenue from any timber that was cut.

The actual events of the war have often been described. In brief overview, the Maine posse left Bangor on 5 February 1839 and proceeded to the Aroostook River via the interior road that ran through Marsardis. The posse reached the Aroostook at the site of Ashland and proceeded down river. With a couple of exceptions, the lumbermen retreated in the advance of the posse. Following the capture of McIntire and his party on the night of 12 February by lumbermen from New Brunswick, the posse retreated to Masardis. Meanwhile, New Brunswick protested the presence of the posse and began to mobilize its military forces to oppose them. Maine responded in kind and started to mobilize its militia. As the

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<sup>125</sup> Maine State Library. T78.1. Report of the Treasurer of State on the Finances for 1842. p. 5. Report of the Treasurer of State on the Finances for 1832. The report for 1842 stated that the public debt at the end of 1841 was \$1,734,861.47. Jewett, Fred Eugene. A Financial History of Maine. 1937. New York, AMS Press, 1968. pp. 28 and 33. Stated that the public debt of Maine at the end of 1838 was \$584 K and \$1,187 K at the end of 1839.

<sup>126</sup> Maine State Library. Report of the Maine Land Agent for 1836. p. 14.

<sup>127</sup> Hatch, Louis Clinton. Maine: A History. 3 Vol. New York: The American Historical Society, 1919. Vol. 1. p. 232. Arndt, J. Chris. “Maine in the Northeastern Boundary Controversy: States’ Rights in Antebellum New England”, New England Quarterly, 62:2 (1989:June) pp. 213-214.

British forces took up positions along the St. John River, the Maine posse reoccupied the site of Fort Fairfield. Units of the Maine militia soon reinforced the posse. Both sides were concerned about not creating a “collision” and thus initiating armed conflict. The crisis was brought to a conclusion in late March of 1839 when an agreement was signed that left Maine in control of the Aroostook Valley. Because it is commonly believed that there were no armed confrontations, the crisis is frequently referred to as the “bloodless” Aroostook War. Any reference to conflict usually mentions a bar room brawl in a tavern along the Woodstock/Houlton road and the death of a farmer due to a ricocheted bullet during the victory celebrations at Fort Fairfield.<sup>128</sup> However, this historiography overlooks the confrontations between the lumbermen and the Maine posse. These were serious, both parties were armed, and there was a real potential for bloodshed. In fact, the lumbermen presented the only creditable resistance to the presence of the Maine posse.

Rufus McIntire, the Maine Land Agent, does not appear to have been a lumberman but he was a seasoned politician. He had run against John Fairfield for the Democratic nomination for Governor in 1838. Prior to this, he had represented Maine in Congress for four terms.<sup>129</sup> His appointment as Land Agent was his consolation prize and he could be counted on to fully support Maine’s interests. McIntire employed Major Hastings Strickland, the sheriff of Penobscot County and

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<sup>128</sup> MacNutt. New Brunswick. p. 269.

<sup>129</sup> Hatch. Maine: A History. Vol. I. pp. 231 and 272.

a “leading Bangor lumberman” to lead the posse.<sup>130</sup> Strickland quickly organized his posse of men from Bangor, Old Town, Ellsworth and Lincoln and set out on 5 February. They were organized into three divisions, totalling about 200 men, under Captains Stover Rines [Rhines], William Parrott and Ward Witham.<sup>131</sup> Given that the posse was quickly raised in a lumbering area, it is possible that many members of it were engaged in the timber industry in some manner. Because the division leaders held militia rank, some have suggested that the posse were militiamen on active duty but that was not the case.<sup>132</sup> However, it is very likely that many of the men in the posse were also members of the militia. McIntire took two magistrates with him, Gustavus G. Cushman and Thomas Bartlett, who would charge, on the spot, anyone arrested for trespassing. While the posse advanced towards Masardis along the Aroostook road, George W. Buckmore was sent up the Aroostook, via Woodstock, to scout the area. Buckmore’s report that “the trespassers would make trouble” was accurate.<sup>133</sup> Buckmore was not a disinterested party in the lumber industry. He had just been granted permission to build a dam and mills at the future site of Ashland where the Great Machias River joins the Aroostook.<sup>134</sup> Colonel Ebenezer Webster and Captain J.H. Pilsbury joined the posse at some point. They were both engaged in the lumber industry and were said to be en route to the Aroostook Falls to clear out a rock that was obstructing the passage of timber.<sup>135</sup>

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<sup>130</sup> Judd. Aroostook. p. 32.

<sup>131</sup> Maine State Library. Bangor Whig, February 5, 8 and 15, 1839.

<sup>132</sup> Day, Clarence A. Aroostook: The First Sixty Years. Caribou, ME: Northern Maine Regional Planning Commission, 1989. p. 47.

<sup>133</sup> Maine State Library. Bangor Whig, February 13, 1839.

<sup>134</sup> UNB. Land Agent’s Report, State of Maine, 1838. p. 20.

<sup>135</sup> Maine State Library. Bangor Whig, February 15, 1839.

They were also building a boom across the mouth of the Aroostook River that was later taken over by the New Brunswick government.<sup>136</sup> From this, it is clear that the majority of the key members of the Maine posse were lumbermen and it is reasonable to conclude that many of the rank and file were as well.

According to Governor Fairfield, about 300 armed trespassers had gathered to oppose the posse prior to their arrival at the Aroostook River [Masardis]. However, they dispersed when they saw that the posse had a brass six-pounder cannon with them. This encounter is difficult to verify, as it is not mentioned in McIntire's report however the Bangor Whig is said to have reported it.<sup>137</sup> This may have been the same gathering of settlers that Asa Dow had organized. According to him, the settlers wanted to resist the Americans and that they were "willing to make Battle". The settlers had gathered but the Americans did not arrive and so they dispersed.<sup>138</sup> The posse arrived at Masardis on 8 February and began to push down

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<sup>136</sup> Maine State Library. L23 1:84-. Report of the Land Agent, 1840 (1839) Rufus McIntire. p. 9. BPP/USA/CR. p. 388. Harvey to Fairfield dated February 13, 1839. In his letter to Fairfield in which he protested the presence of the posse, Harvey also said that he had directed a boom to be built across the mouth of the Aroostook River to stop and seize any illegal timber in the spring. Any funds received from the sale of seized timber would be placed in the Disputed Territory Fund. A similar boom or booms would be placed on the Upper St. John River. This is why the Webster/Pilsbury boom was taken over by the Provincial government. PANB. RS663H. Executive Council: Timber 1840. December 10, 1839. HMG Gardner to Harvey. It appears that by end of 1839, the government boom at mouth of the Aroostook had been sold to John D. Beardsley and his son, Punderson Beardsley. Mr. T.E. Perley and Mr. James Taylor were also involved in the transaction. Judd. Aroostook. p. 64. In the final irony, the Fort Fairfield boom was sold to a consortium of American (Thomas J. Webster, John B. Wing and Shepard Cary) and British (Thomas Perley) lumbermen in the spring of 1843 and moved to the mouth of the Aroostook River to replace the British boom there.

<sup>137</sup> BPP/USA/CR. p. 384. Fairfield to the [Maine] House of Representatives, February 15, 1839. Scott. Ties of Common Blood. p. 130.

<sup>138</sup> PANB. F1502. C.O. 188/63. The Queen vs. Rufus McIntire, Gustavus G. Cushman, Thomas Bartlett and Ebenezer Webster. pp. 172 and 172a. Magistrates George Minchin and Robert Parker [confirm] investigated the circumstances surrounding the capture of McIntire and his party. The outcome of this investigation was that the prisoners were "state offenders" and should be dealt with accordingly under martial law. The testimony by the witnesses provides the best information available for these events.

the Aroostook River. Meanwhile, word of their advance had reached New Brunswick and “expresses were immediately sent into the woods to withdraw the teams and men”.<sup>139</sup> Near the site of Presque Isle, Maine, the posse encountered 10 or 16 armed men who made a stand in order to buy time for their horse teams to escape. As Strickland charged through them, they fired on him, wounding his horse. While Strickland went on to capture the teams, the posse arrested the lumbermen. Cushman and Bartlett examined the prisoners on the ice of the river. Some were released while five others were sent to Bangor along with the teams to await trial. Dennis Fairbanks and Ebenezer Webster posted bail for Peter Bull, who lived near where the clash occurred. Two other prisoners, Charles Johnson and Mr. Nary [?] were released after having been held for two hours. It is not clear when this incident occurred but it was likely on 12 February. Following this, the posse proceeded to the mouth of the Little Madawaska and made camp there. All the trespassers appeared to have fled the area. McIntire and his party went on to James Fitzherbert’s home on the eastern side of present day Fort Fairfield.<sup>140</sup>

Unbeknownst to them, the movements of the posse were being carefully monitored by the settlers and lumbermen. Punderson Beardsley, a lumberman and recent resident of the Aroostook Valley, had organized men to keep watch on the posse. When it was learned that McIntire and party were at Fitzherbert’s on the night of 12 February, his brother, Paul Beardsley, took the word to Benjamin

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<sup>139</sup> Maine State Library. Bangor Whig. February 13, 1839.

<sup>140</sup> Report of Maine Land Agent for 1839, p. 2, PANB. Queen vs. McIntire et al., pp. 179a and 181, Bangor Whig, February 15, 1839. The fate of the five prisoners sent to Bangor remains a mystery. They were not tried in the Spring sessions of the Bangor Court and it is likely that the charges against them had been dropped.



Tibbits' house at Andover. A large group of lumbermen had gathered there and armed themselves with militia muskets stolen from Woodstock and with rifles. Asa Dow, who was at Tibbits, then took 15 to 18 men in two sleighs to Fitzherbert's to arrest them. McIntire, Cushman, Bartlett, Webster and Pilsbury were taken by sleigh to Tibbits. As Webster and Pilsbury claimed that they were on personal business, they were soon released. However, when it became clear that Webster was suspected of being the guide for the posse, he was rearrested. The four Americans were taken on to Woodstock and Fredericton.<sup>141</sup> When they heard about the captures, the posse made a hasty retreat to their camp at Masardis. The ostensible reason for this was a rumour that a force of "175 men and 25 Indians" was advancing against them.<sup>142</sup> Sheriff Strickland then made his infamous ride to Bangor for reinforcements. While this was occurring, MacLauchlan and Captain Benjamin Tibbits, whose house the lumbermen had gathered at, went to the posse's camp at Masardis to try to find out what their purpose was. In retaliation for McIntire's capture, MacLauchlan and Tibbits were made prisoners and sent to Bangor.<sup>143</sup>

As with the Maine posse, the key figures from New Brunswick who were opposing the advance of the posse were lumbermen. The de facto leader was Asa

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<sup>141</sup> PANB. *Queen vs. McIntire*. pp. 173, 174, 175 and 187.

<sup>142</sup> Maine State Library. *Bangor Whig*. February 18, 1839. Maine State Archives. George W. Coffin. *Journal of Journeys into the State of Maine in the Months of May, June, July and Sept. 1838 and Apr., Jun, Aug & Sep 1839*. According to the investigations Coffin made in April 1839, only about 30 New Brunswick lumbermen were involved in McIntire's capture. They also planted the rumour that there was a force of "300 White Men & 25 Indians well armed" coming to attack the posse in order to discourage the posse from pursuing them.

<sup>143</sup> BPP/USA/CR. pp. 385 to 387. Fairfield to the [Maine] Senate and House of Representatives, February 18, 1839.

Dow, a lumberman from the Woodstock area. While acknowledging his role in the capture of McIntire and party, Dow denied that he was involved in the theft of the militia muskets at Woodstock. However, a newspaper article of the day credits him with masterminding this as well.<sup>144</sup> Punderson Beardsley was a lumberman and his brother, Paul, appears to have been as well. Captain Benjamin Tibbits, whose house the lumbermen assembled at, operated a store and gristmill. It is possible that he may have supplied timber camps. His brother, James Tibbits, was a well-known lumberman. One of the magistrates who examined McIntire and party at Woodstock, Richard Ketchum, had been involved in the timber industry for many years.<sup>145</sup> Thus, in the opening phase of the Aroostook War, it was very much Maine lumberman versus New Brunswick lumberman with the settlers along the Aroostook River, who were also lumbermen, caught in between. It also appears that the actions by the New Brunswick lumbermen helped to escalate the crisis. During his meeting with Captain Hawkshaw, McIntire stated that he had accomplished his goal of breaking up the trespassers and was planning to leave the Aroostook on the 15<sup>th</sup>. A few men might be left behind to mark the seized timber. He had originally planned

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<sup>144</sup> PANB. Queen vs. McIntire. pp. 177. Maine State Library. Bangor Whig dated February 27, 1839 as copied from the St. John Chronicle. Dow is reported to have gone to Woodstock and demanded the militia arms from Colonel Ketchum. When he refused, Dow arranged for the arms to be stolen.

<sup>145</sup> PANB. Queen vs. McIntire. pp. 175a and 185a. Testimony by Asa Dow and Punderson Beardsley. Marceau, Margaret. Grand Falls Yesterdays: A History of Grand Falls. 2<sup>nd</sup> Ed. Grand Falls, NB: Merritt Press, 2001. p. 158. Paul Beardsley purchased Sir John Caldwell's mill in Grand Falls after his death in 1842. PANB. RS 637 C.3. Tibbits to MacLauchlan dated September 8, 1839. Tibbits states in this that he owns a store and [grist] mill. PANB. MC80/530. "The Gates" – a short history of the Hazen and Tibbits family. James Tibbits (lumberman) is said to be a brother of Benjamin Tibbits of Andover. BPP/USA/CR. p. 483. Buckmore named Ketchum as operating a timber camp in the Madawaska settlement area. PANB. RS 344/a/6. Harvey Letterbook. Richard Ketchum and John Diblee to Harvey dated 14 Februrry 1839. They are sending McIntire and party to Fredericton under the guard of Captain Cunliffe.

to go to the Fish River but was no longer intending to because MacLauchlan would be stopping the trespassing there.<sup>146</sup>

McIntire's capture and Harvey's Proclamation of 13 February, that threatened to use military force to resist the posse, prompted Maine to pass a Resolve on February 18 that authorized the stationing of a military force on the Aroostook River and, if practicable, on the St. John River, to prevent trespassing and to protect the timber that had already been cut.<sup>147</sup> Meanwhile, Harvey had written to Fairfield and, while decrying Maine's actions, acknowledged Maine's concerns about timber cutting. Harvey stated that he had issued orders to build a boom across the mouth of the Aroostook River to seize trespass timber and that he would do the same along the Upper St. John River.<sup>148</sup> This olive branch was to no avail. Sabres had been rattled in New Brunswick and Maine, and both sides began to deploy troops into the area. Neither the British military nor the Maine militia wished to risk a collision and so it was up to the posse to take the next steps. Charles Jarvis was appointed the Provisional Land Agent in the absence of McIntire.<sup>149</sup> Jarvis proceeded to Masardis on 17 February, where he waited for reinforcements for the posse to arrive.<sup>150</sup> While there, Jarvis sent a detachment under Alvin Nye, and accompanied by Buckmore, to Fish River to chase off the trespassers who were working there. According to information provided by Captain Francis Rice,

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<sup>146</sup> PANB. Queen vs. McIntire. pp. 183 and 184a. Testimony of Captain John Hawkshaw, Royal Engineers.

<sup>147</sup> BPP/USA/CR. pp. 387 to 388. State of Maine, Resolve for the protection of public lands dated February 18, 1839.

<sup>148</sup> *Ibid.* p. 388. Harvey to Fairfield dated February 13, 1839.

<sup>149</sup> *Ibid.* p. 384. Fairfield to the [Maine] House of Representatives, February 15, 1839.

<sup>150</sup> Maine Historical Society. Coll. 145. John Fairfield papers. Box 3. Acting Land Agent Jarvis to Fairfield dated February 19, 1839.

approximately 11 lumbermen were arrested and taken off by the posse.<sup>151</sup> Jarvis reported that nine had been arrested. Five were released and the posse brought four back to Marardis where they were released after having promised to cease cutting illegally.<sup>152</sup> Once the reinforcements had arrived, the posse began a slow and cautious advance down the Aroostook River to the future site of Fort Fairfield.<sup>153</sup> Jarvis arrived there on 1 March and began to fortify the area.<sup>154</sup> As this was occurring, Harvey made one last attempt to influence events and perhaps defuse the situation. On 27 February, William F. Odell, the Provincial Secretary, authorized MacLauchlan to take a party of unarmed assistants into the disputed territory to prevent the cutting of timber. MacLauchlan was to show his authority to Major General Isaac Hodsdon who was commanding the Maine militia at Houlton. Hodsdon's answer was brief and to the point. MacLauchlan had no authority within the disputed territory and he was not to enter it. There was no sense of compromise on the part of Maine's representative, be they militia or posse.<sup>155</sup>

As the British regulars and New Brunswick militia and the Maine militia and posse took up positions, the problem of trespass timber moved to the background. The crisis was defused by 23 March when Fairfield, Harvey and Major General

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<sup>151</sup> UNB Loyalist Collection. LGNB. Despatches Received 1837-1845. (FC LPR .N4L5D4). Vol. XX 1839. Despatches Received 1839 – Col Maxwell's Reports. Maxwell to Harvey dated 26 February 1839. Capt Francis Rice reported that Americans had entered the Madawaska settlement and had carried off eleven inhabitants. Note: This refers to the first visit of the posse to the Fish River.

<sup>152</sup> Scott. Ties of Common Blood. pp. 154-155. Cites Jarvis to Fairfield dated February 29 (?) 1839. The letter is located in the Maine Historical Society, Collection 145. John Fairfield papers. Box 4/1.

<sup>153</sup> Maine Historical Society. Coll. 145. John Fairfield papers. Box 3/10. Acting Land Agent Jarvis to Fairfield dated February 24, 1839. He stated that the posse was moving carefully down the Aroostook and that they were concerned about the British response, if any.

<sup>154</sup> Ibid. Box 4, Mar-Apr 1839. Jarvis to Fairfield dated March 1, 1839.

<sup>155</sup> LAC. MG9 A2 Vol. 6, Pt 3, File 3, 1839-1857. Odell to MacLauchlan dated 27 February 1839, UNB Loyalist Collection. LGNB. Despatches received 1837-1845. Vol. XX 1839. Hodsdon to MacLauchlan dated March 25, 1839.

Winfield Scott, President Van Buren's representative, had all signed an agreement that ended the Aroostook War. Under its terms, Maine could leave a land agent and a small civil posse in the "disputed territory", less the Madawaska settlement, to prevent the cutting of trespass timber.<sup>156</sup> The British understanding was that the Maine posse was only going to be in the Aroostook Valley. With this, the Aroostook War came to an end.

While there were many underlying reasons why this border crisis occurred, the illegal cutting of pine timber was the spark that ignited it. Given the heavy involvement of lumbermen in the Maine posse and the resistance to it by the New Brunswick lumbermen, it can truly be described as a "lumberman's war", at least at the local level. While not discussed in previous studies, there were also lumbermen, or those with interests in the business, in the militias of Maine and New Brunswick that participated in the crisis. Shepard Cary, a prominent Houlton lumberman, was appointed as an Assistant Quarter Master General for the Maine militia at Houlton.<sup>157</sup> Elijah L. Hamlin, the former Maine Land Agent, was in charge of the line of vedettes, or cavalry messengers, between Fort Fairfield and Houlton.<sup>158</sup> On the British side, James A. MacLauchlan, the Warden of the Disputed Territory, was also the Commanding Officer of the 2<sup>nd</sup> Battalion of the Carleton County Militia.

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<sup>156</sup> BPP/USA/CR, pp. 431-432. Agreement signed by Major General Winfield Scott, Sir John Harvey and Governor John Fairfield dated 21 to 23 March 1839.

<sup>157</sup> Maine Historical Society. Coll. 8, Isaac Hodsdon papers, 1811-1859, Box 1/6 papers January to March, 1839. Adjutant General's Office to Shepard Cary dated March 1, 1839. Cary was appointed as an Assistant Quarter Master General at Houlton.

<sup>158</sup> Maine Historical Society. Coll. 145. John Fairfield papers. Box 4 Mar-Apr 1839. E.L. Hamlin to Fairfield dated March 27, 1839. He stated that the line of vedettes between Fort Fairfield and Houlton could not be maintained beyond mid-April when the winter road would break up.

Companies from his battalion formed part of the garrisons at Grand Falls and Tobique/Mouth of the Aroostook.<sup>159</sup>

### **To the Webster-Ashburton Treaty – 1839 to 1843.**

Following the end of the Aroostook War, the posse again moved to the forefront. In late March, as the military forces on each side began preparations to withdraw, Jarvis ordered Alvin Nye to take a force to the Fish River. He was to build a boom to prevent timber being removed and, in anticipation of a British response, a blockhouse for defence.<sup>160</sup> Nye initially located his force about nine miles up the river. Then, when there was no British response, he moved to the mouth of the river in late April, where he built a blockhouse and a boom. The boom was partially anchored on an island in the river and so stopped the passage of timber on both the Fish River and a channel of the St. John River.<sup>161</sup> Nye reportedly stopped between 600 and 800 tons of timber at the boom.<sup>162</sup>

The posse at Fort Fairfield busied themselves with finishing the boom and working on the defences that included two blockhouses. Winter was ending and the lumbermen were desperate to get their timber out. With the Aroostook blocked, the focus shifted to River de Chute, the next river to the south. There were reports that the lumbermen were hauling timber there from the Aroostook River watershed and

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<sup>159</sup> PANB. RS 559. Carleton County Militia 2<sup>nd</sup> Battalion Order Book, 1837-1881.

<sup>160</sup> Maine Historical Society. Coll. 145. John Fairfield papers. Box 3/10. Provisional Land Agent Jarvis to Nye dated March 27, 1839.

<sup>161</sup> Maine State Archives. Report of the Land Agent for 1839. p. 3a. Maine State Archives. Parrott. Nye to Jarvis dated April 23, 1839.

<sup>162</sup> Maine State Library. L23 1:84-. Report of the Land Agent, 1840 (1839) Rufus McIntire [printed version]. Attached Report of Charles Jarvis, Superintendent for opening roads from Aroostook to Fish River. p. 49. Nye moved to the mouth of Fish River in late May and stopped 600 to 800 tons of timber.

then attempting to float it out.<sup>163</sup> This was in addition to timber being cut on the American side of the boundary line. In early April, Jarvis sent Thomas Bartlett with a detachment of 10 men from the posse to River de Chute. He was to arrest any trespassers found there, destroy their camps and obstruct the river so timber could not be driven down it. When he arrived there on 9 April, Bartlett quickly arrested eight men and seized seven horses. During the day, one of the prisoners – a young boy – escaped. Fearing that the boy would raise the alarm and that an attack would follow, Bartlett proposed to the owners of the teams – Asa Harvey and John Kearney – that they post a bond of \$400 for their teams and that they accompany Bartlett to Fort Fairfield the next day as surety for their bond. This was agreed to. As anticipated, a “mob” of 28 men, armed with “muskets and fowling pieces”, arrived at the camp early the next morning. John Venning, their leader, demanded the release of the prisoners and horses. Outnumbered, Bartlett did not resist. However, he convinced Harvey and Kearney to return with him to Fort Fairfield with the inducement that the Land Agent might allow them to keep their timber, presumably after paying a fine. If they went with the mob, Bartlett said that the posse would return and destroy all of the timber. As this was the only way to save anything from their work, Harvey and Kearney agreed. It is not known if they were able to redeem their timber.<sup>164</sup> The posse did not have sufficient manpower to guard the timber on

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<sup>163</sup> Ibid. p. 23.

<sup>164</sup> Maine Historical Society. Coll. 145. John Fairfield papers. Box 4 Mar-Apr 1839. Jarvis to Bartlett dated April 8, 1839 and Bartlett to McIntire undated but most likely about 11 April 1839.

River de Chute and, shortly afterwards, the lumbermen returned and took out 400-500 hundred tons, leaving about 400 tons behind.<sup>165</sup>

The efforts to prevent the cutting of trespass timber now had two distinct foci. Along the Aroostook River, it was the trespassers versus the Maine posse that was based at Fort Fairfield. In the Madawaska settlement, the situation was more complicated. The New Brunswick authorities were, by the agreement, in charge of this area and the normal efforts to prevent trespassing continued. However, the Maine posse was established at Fort Jarvis, later Fort Kent, and they were also trying to prevent trespassing. Inevitably, the activities of the Provincial and Maine authorities overlapped and there was friction between the two. The Maine posse also worked to facilitate the extension of Maine's political jurisdiction, which created even more friction. Because of the antagonistic attitude that developed, the level of violence, either potential or actual, also increased dramatically.

Following the incident at River de Chute, the activities at Fort Fairfield seem to have fallen into a predicable routine. The first priority was to build the boom and then work on the two blockhouses – one to protect the boom and a larger one on Fort Hill that overlooked the new settlement. There was ongoing concern about the intentions of the British troops and the lumbermen. On 13 April, “four redcoats” from the garrison at Tobique had visited Fort Fairfield. Then Benjamin Tibbits and a Mr. Martin were frequent visitors at Fitzherbert's. Fitzherbert also had a series of other visitors that caused concern but nothing came of it. The prevention of trespass

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<sup>165</sup> Maine State Library. L23 1:84-. Report of the Land Agent, 1840 (1839) Rufus McIntire [printed version]. Attached Report of William P. Parrott, Commander of the posse at Fort Fairfield. p. 66.



and preventing timber being driven out was a continuing priority. Parties were sent on several occasions during April and May to investigate reports of activity along River de Chute and the Aroostook. Other parties were sent to inventory how much timber had been left in the woods due to the lumbermen having fled as the posse advanced in February.<sup>166</sup> However the main concern was the spring log drive.

With the spring break-up, the ice started to run on 18 April and the timber soon began to arrive at the boom. Captain William Parrott, who was in charge of the posse at Fort Fairfield, initially experienced difficulties in separating the “permit” timber from the trespass timber. The timber arrived loose and not in rafts. There was a worry that this was being done in hope that the boom would break. Others tried to do this “by loading the current with trees”. They were not successful. Parrott was worried that some illegal timber would slip past. In order to prevent this, he was prepared to not pass any timber. Because he was not certain about the extent of his authority, Parrott consulted on this and other matters with McIntire, which caused delays as letters went back and forth from Fort Fairfield to McIntire’s location, most likely in Augusta. This greatly worried Ebenezer Webster who was anxious that his permit timber should be allowed through the boom. Webster was on the scene and had his men helping the posse to sort the timber. Unfortunately, the marks on his timber did not agree with the authorized ones that permits had been issued for, which caused delays in passing the timber.

Tensions must have been rising as Parrott was becoming increasingly concerned about the safety of the boom. While the boom was holding up well

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<sup>166</sup> Maine State Archives. Parrott. Entries for April 12, 13, 16, 19, 29 and May 12 and 19.

against the ice, there was the risk that the lumbermen would try to break it in order to get their trespass timber out. On 2 May, he declared an exclusion zone around it. The guard would defend the boom with force should any unauthorized person attempt to approach it.<sup>167</sup> The problems of sorting timber were worked out by 9 May; the timber was passing the boom and the tensions diminished. The next step was to sell the seized timber. On 18 June, Parrott reported to McIntire that the markets in Saint John were very high and that it might be possible to sell the timber for \$4.22 per ton. When the auctions were held in July and August, the going price was \$3.00 per ton. Thomas E. Perley, a Woodstock merchant, purchased several of the lots. In 1838, Perley had timber, which was suspected of being illegally cut on the Aroostook, seized.<sup>168</sup> It is possible that he was buying back some of the timber that he had already paid lumbermen to cut. This helps to confirm the involvement of the St. John River merchants in the timber trade of the disputed territory.

The real danger began in the fall and was caused by Maine and Massachusetts working at cross-purposes. Massachusetts was issuing timber-cutting permits on the Aroostook and Parrott believed that the lumbermen would use this as a cover to cut illegal timber. On 5 September, Parrott wrote to McIntire and said that, pending further direction, his solution was to stop any traffic going up river that was suspected of being related to lumbering. On or before 7 September, he gave notice that the Aroostook was closed to anyone entering it for the “purpose of

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<sup>167</sup> Maine State Archives. Parrott. pp. 3, 13, 14 and 17. L23 1:84-. Report of the Land Agent, 1840 (1839) Rufus McIntire. p. 8 and Attached Report of William Parrott. pp. 67 and 68.

<sup>168</sup> Maine State Archives. Parrott. pp. 26, 38, 39, and 45. PANB. RS 637. 1.a.9. Letterbook. pp. 217/218.

cutting or making timber or for committing any trespass whatsoever”.<sup>169</sup> This action clearly pushed the lumbermen, who were anxious get their supplies and gangs into the woods, to the breaking point. A group of them, about 40 strong, gathered at Tibbits’ store in Andover on the evening of 7 September. They entered the store and took the militia muskets that had been placed there after the end of the Aroostook War. Moving through the woods, they approached the posse’s position at Fort Fairfield about 3 o’clock on the morning of 8 September. An alert sentry spotted them and fired on them. The raiders then hastily retreated to Andover, replaced the militia arms and then dispersed. While this raid had accomplished nothing, it did anger and embarrass the Provincial authorities that British citizens would act in such a manner. MacLauchlan was assigned to investigate the incident.<sup>170</sup>

The Americans were not too concerned about this as Parrott described it as an “affair too *ridiculous* to be taken seriously” when G. W Featherstonhaugh, a British boundary surveyor, visited him on 10 September.<sup>171</sup> In his report to McIntire, Parrott reconfirmed his belief that the attack was a result of Massachusetts granting cutting permits. The posse’s position at Fort Fairfield was an obstacle to the lumbermen and they wanted to destroy it. He also believed that the “persons deeply engaged with only one exception were all men who had been largely engaged in trespassing on the public lands and otherwise connected with the business at

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<sup>169</sup> Maine State Archives. Parrott, pp. 52 and 54.

<sup>170</sup> PANB. RS 637 C.3. MacLauchlan to Harvey dated 9 September 1839 and Tibbits to MacLauchlan dated September 8, 1839. RS 344 C.3. MacLauchlan to Parrott dated September 9, 1839 and Parrott to MacLauchlan dated September 9, 1839.

<sup>171</sup> McEwen, Alec, ed. In Search of the Highlands: Mapping the Canada-Maine Boundary, 1839. Fredericton: Acadiensis Press, 1988. p. 33.

Woodstock and Tobique”. Among these were Benjamin Beveridge and Jonathan P. Taylor of Tobique and John Venning of Woodstock. Parrott had heard that John Venning and John Craven of Woodstock were the leaders while they were “commanded by an officer of the militia of New Brunswick”.<sup>172</sup> The only person singled out for punishment by the Provincial authorities was Captain William McKenzie. By his own admission, McKenzie had been gulled into joining the party by appeals to his patriotism. He was clearly not part of the lumbermen’s resistance. Harvey dismissed McKenzie from the militia but, a little over a year later, convinced Lord John Russell, the Secretary of State for War and the Colonies, to reinstate him. Harvey’s change of heart was prompted by popular expressions of sympathy for McKenzie that was capped by a petition signed by 43 leading men of Woodstock, including Richard Ketchum.<sup>173</sup>

As part of his policy of stopping traffic from going up the Aroostook, Parrott detained a boat of supplies that belonged to Captain John H. Pilsbury on 9 September. This led to a quick response when Parrott was served with a writ on behalf of Ebenezer Webster and John Pilsbury, both of Orono, Maine and John Taylor of Fredericton, on 18 September. They wanted their boat and supplies returned and Parrott was to appear in court in January of 1840 to answer the charges against him.<sup>174</sup> It was clear that the lumbermen were no one’s friends. They had

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<sup>172</sup> Maine State Archives. Parrott. pp. 55 and 62.

<sup>173</sup> TNA. CO 412/468, NB Despatches 1839. McKenzie to Colonel Shore, Adjutant New Brunswick Militia, dated October 7, 1839 and Harvey to Russell dated 7 October 1839. CO 142/469, NB Despatches 1840. Petition to reinstate McKenzie dated 12 September 1840. LAC. Despatches Received Vol. XXI 1840. Russell to Harvey dated 22 October 1840.

<sup>174</sup> Maine State Archives. Parrott. pp. 53 and 65.

assisted the Maine posse in the winter when it was convenient to them and now, in the autumn when the posse was an obstacle, they took legal action against it. However, Parrott's persistence paid off. In late October, he reported to McIntire that the lumbermen had decided to pull their men out of the woods and that there would be no cutting taking place during the coming winter. Apparently, MacLauchlan had been taking equally vigorous measures to prevent trespassing along the Upper St. John River. By 12 November, Parrott could report that all was quiet on the Aroostook.<sup>175</sup> By all measures, the presence of the posse on the Aroostook had effectively stopped the cutting of trespass timber. In his annual report, McIntire estimated that 16,000 tons of timber had been cut on the Aroostook before the arrival of the posse. Of this, some had been sold and there was still about 10,000 tons in the water and in the woods along the Aroostook.<sup>176</sup> With the posse firmly in control, the problem of trespass timber was largely solved along the Aroostook. This was not the case along the Upper St. John River.

Trespassers were still active there and, with the addition of the posse, a three-way struggle developed. Once he became aware of the presence of the Maine posse on the Fish River, MacLauchlan sent them a letter on 21 April advising them that they were in violation of the agreement and demanded that they leave. He also told them that he and his assistants would begin seizing unlawfully cut timber once the navigation season opened. Nye's reply two days later was that they had no intention of leaving and that "the Land Agent of Maine shall receive instructions from no

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<sup>175</sup> *Ibid.* Parrott, pp. 80 and 92.

<sup>176</sup> Maine State Library. L23 1:84-. Report of the Land Agent, 1840 (1839) Rufus McIntire. p.

Foreign Power”.<sup>177</sup> The first confrontation occurred in early May. The details are somewhat confusing as are the interpretation of events. According to Parrott, “Nye had driven off a gang of trespassers with Mr. MacLaughlin at their Head who, with threats, set off down river to procure reinforcement”. John Baker who had come to Fort Fairfield for reinforcements reported this incident to Parrott on 16 May.

Captain Bartlett left the next day for Fish River with 25 men.<sup>178</sup> The British version of events is somewhat different. According to MacLauchlan, he was seizing timber near the juncture of the Allagash and St. John Rivers when Baker appeared on 10 May and threatened to bring a force and two brass cannon to force MacLauchlan to stop his work. He also received a letter from Nye on the same day that ordered him to stop trying to remove logs that were under the jurisdiction of the State of Maine. On about the same day, a group of MacLauchlan’s men led by Elias Yerxa were heaving logs into the river at Baker’s Brow near the St. Francis River. A force of about 30 Americans with muskets and fixed bayonets ordered them off. Nye, who was accompanied by Baker, led the Americans.<sup>179</sup>

The Provincial authorities chose not to confront Nye and his armed posse. In fact, Harvey ordered MacLauchlan to pull back “rather than risk collision”.<sup>180</sup> At about the same time, Odell instructed MacLauchlan to submit a list to the Crown Land Office of who had cut what quantities of timber. It would appear that the

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<sup>177</sup> UNB. Loyalist Collection. LGNB Despatches received 1837-1845. FC LPR .N4L5D4 Vol. XX 1839. MacLauchlan to Harvey dated April 21 and April 25 1839.

<sup>178</sup> Maine State Archives. Parrott. p. 18.

<sup>179</sup> UNB. Loyalist Collection. LGNB Despatches received 1837-1845. Vol. XX 1839. MacLauchlan to Captain Samuel Tyron, Harvey’s Private Secretary, dated 10 and 11 May 1839.

<sup>180</sup> PANB RS 344. C.3.9. Harvey Letterbook. Harvey to Scott dated May 14, 1839.

timber was to be seized and then redeemed by the owners upon payment of the appropriate duty of eight shillings per ton. The problem remained of how to separate the legal timber cut by the residents and the illegal timber cut by the trespassers.<sup>181</sup> As always, there was no easy solution to this. Meanwhile, the Maine posse with the assistance of Baker, were stopping the settlers on the south bank of the Upper St. John from driving their logs. Later Nye claimed that he had jurisdiction of all of the timber along the Upper St. John.<sup>182</sup> When Nye did let the timber pass after the owners had paid a duty of five shillings per ton, MacLauchlan then seized it and would only release it after payment of the duty of eight shillings per ton.<sup>183</sup> The trespassers, and some of the settlers who were cutting legally, were paying a double duty.

Harvey tried to use diplomatic means to have the posse removed from Fish River. When his letter of 14 May to Major General Scott had no effect, he arranged for a meeting between Thomas Baillie and Rufus McIntire in Bangor on 6 June. While agreeing to disagree about the legitimacy of the posse's presence on the Fish River, McIntire did agree to restrict Nye's activities to the Fish River.<sup>184</sup> According to the British version of events, Nye was to withdraw up the Fish River but this did

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<sup>181</sup> UNB. Loyalist Collection. LGNB Despatches received 1837-1845. Vol. XX 1839. MacLauchlan to Tryon dated 15 May 1839 that referenced Odell's letter of 4 May 1839 and 16 May 1839 that discussed the duty..

<sup>182</sup> *Ibid.* Vol. XX 1839. MacLauchlan to Tryon dated 26, 27 and 28 May 1839.

<sup>183</sup> UNB. Loyalist Collection. LGNB Despatches Sent Vol. VII - 1839. FC LPR .N4L5D4 21 Aug 39. MacLauchlan to Harvey dated 21 August 1839. MacLauchlan had seized the timber that the Americans had let past Fish River and released on payment of 8/ per ton duty.

<sup>184</sup> Scott. *Ties of Common Blood*. p. 260. Refers to the minutes of the meeting between Baillie and McIntire as found in the Fairfield papers box 145 B5/1 at the Maine Historical Society. Baillie's report of the meeting is not locatable at PANB, however see RS 344.C.3.a., Harvey Letterbook for 1839, Wm. F. Odell to Baillie dated 28 May 1839. Odell, on behalf of Harvey, tasked Baillie to find and meet with McIntire to discuss the presence of the Maine posse at Fish River.

not happen.<sup>185</sup> MacLauchlan's assistant, L.B. Rainsford visited the posse on 23 June and was informed that they had no intention of leaving. Additionally, they had opened a road from the Aroostook River.<sup>186</sup> Soon afterwards, Colonel Shore and Peters visited Nye at Fish River as a follow-up to the meeting between Baillie and McIntire. Not surprisingly, Nye told them that he had not received any instructions to leave the area. The Maine posse was at Fish River and intended to remain there.<sup>187</sup>

As the summer passed, the Provincial authorities apparently reached a *modus vivendi* with the posse at Fish River as MacLauchlan approached the fall season with a renewed mandate. This was partially his own doing, as on October 19 he had written to Harvey to state his concern that trespassing in the Madawaska area would greatly increase because of an influx of those lumbermen who had been prevented from cutting on the Aroostook River. In partial response to this, he received a letter on 22 October from Harvey via Odell that authorized him "to arrest, seize, take and destroy all timber which may be cut upon the ...[disputed] ... Territory" and to "remove and drive off all persons" engaged in this activity. He was also authorized to take with him "such sufficient force or posse of assistants as may enable" him to carry out this mandate. This authority was announced in a general proclamation issued by Harvey on the same day.<sup>188</sup> By the end of November, MacLauchlan

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<sup>185</sup> UNB. Loyalist Collection. LGNB Despatches received 1837-1845. Vol. XX 1839. Tryon to MacLauchlan dated 11 June 1839.

<sup>186</sup> *Ibid.* Vol. XX 1839. MacLauchlan to Tryon dated 18 June and 23 June 1839.

<sup>187</sup> *Ibid.* Vol. XX 1839. Shore and Peters to Harvey dated 29 June 1839.

<sup>188</sup> TNA. CO 421/486. MacLauchlan to Harvey dated October 19, 1839, Odell to MacLauchlan dated 22 October 1839 and a proclamation dated 22 October 1839.



reported having removed the timber trespassers in the Grand Falls area who had left without opposition. However, he was concerned that they would return as they were being urged to do so by their suppliers. The ones in the Madawaska area were more difficult but they had been removed by the end of December after “after much unpleasant and dangerous duty”. MacLauchlan had left two men patrolling the woods who would report if the trespassers returned.<sup>189</sup>

Mr. James Stickney had received a warrant to arrest MacLauchlan if he ventured into Maine controlled territory. In early December, he was said to be waiting with a party of 16 men armed with muskets, bayonets and rifles to ambush MacLauchlan along the river. MacLauchlan had also chased out a party of lumbermen that was sponsored by A.B. Sharpe, a Magistrate at Woodstock. This concerned MacLauchlan to the point where he suggested to Harvey that he be allowed to have an armed posse to support and protect his inspections.<sup>190</sup> This may have taken place along the boundary line on the Aroostook River as A.B. Sharpe was cutting timber there that was seized as possible trespass timber. MacLauchlan appears to have been assaulted at some point as Alexander Sharpe, John D. Rister and Henry Sharpe posted bonds with A.B. Sharpe in 1840 for having interfered with MacLauchlan in his duties and having assaulted him.<sup>191</sup> A.B. Sharpe would not have been the first magistrate to dabble in the timber trade. The two leading magistrates

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<sup>189</sup> UNB. Loyalist Collection. LGNB Despatches received 1837-1845. Vol. XX 1839. MacLauchlan to Henry .J. Harvey, Private Secretary of Sir John Harvey dated 25 November and 28 December.

<sup>190</sup> Ibid. Vol. XX 1839. MacLauchlan to Henry .J. Harvey dated 3 and 4 December 1839.

<sup>191</sup> PANB. RS 76. 3.a.3.d. Information that the bonds had been taken for interfering with MacLauchlan and assaulting him. RS 663H. Executive Council Timber 1841. Aug 27, 1841. Adam B. Sharpe petitioned the Lieutenant Governor to have bond posted for suspected trespass timber cut along the Aroostook portage cancelled.

and militia officers in the Madawaska settlement, Francis Rice and Leonard R. Coombes, were similarly involved.

Although 1839 had been a very turbulent year in the history of the disputed territory, there was one good outcome. Through the efforts of the Maine Land Agent, assisted by his posse at Fort Fairfield and Fort Kent, and the New Brunswick Warden of the Disputed Territory, the cutting of trespass timber had been greatly reduced. Parrott believed that these parallel, although not combined, actions would prevent the further depredation of timber within the disputed territory.<sup>192</sup> For the most part, he was correct. However, while the situation may have been resolved on the Aroostook, the problems related to conflicting jurisdictions continued along the Upper St. John River. As enforcement of the law was increased, those lumbermen who were accustomed to working outside of it became more lawless. During the winter of 1839/1840, MacLauchlan and his assistants continued to experience strong resistance from the trespassers. In March of 1840, MacLauchlan wrote to Harvey and asked him to authorize an armed escort because of the “desperate timber men” that were being encountered. In a similar letter to Odell, MacLauchlan spoke of “the necessity of the utmost caution on my part in the seizing and destruction of timber cut in this section [Madawaska] of the Disputed Territory”. He included a statement by David Parker, one of his assistants, who had been threatened by lumbermen cutting timber on the Grand River. Harvey referred this request to Peters and Street who opined that MacLauchlan could take assistants with him, but only unarmed

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<sup>192</sup> Maine State Archives. Parrott. p. 80.

ones.<sup>193</sup> While the Maine posse at Fort Fairfield could impose its will on the settlers and trespassers by armed force, MacLauchlan and the New Brunswick authorities were forced to rely on moral force.

However, the routine pattern of timber cutting continued. MacLauchlan continued to report those persons illegally cutting timber. This was difficult along the Upper St. John River as the trespassers could claim that the timber had been cut under permits issued for Crown Lands that adjoined the disputed territory, on granted lands within the disputed territory or on the Seignory at Lake Temiscouata. MacLauchlan asked for direction on what action to take to prevent this illegal timber going to market. The Maine posse at Fish River complicated the situation by giving the settlers and others who had cut timber above Fish River during the winter of 1839 the option of either paying a duty of five shilling per ton and removing it or of having it destroyed if they did not accept the offer. Again MacLauchlan asked for direction as to whether or not he should also charge the New Brunswick duty of eight shillings per ton on this timber. It appears that, while problems were being identified, direction from Fredericton was not forthcoming.<sup>194</sup> By the summer of 1841, Leonard R. Coombes and John Emmerson, both prominent businessmen within the Madawaska settlement, were petitioning Lieutenant Governor Sir William Colebrooke directly for remittance of the New Brunswick duty. Harvey had given

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<sup>193</sup> PANB. RS 344/c/4. Harvey Correspondence 1840. MacLauchlan to Harvey dated 29 March 1840 and Peters and Street to Harvey dated 4 April 1840. RS 13. 10/a/4. Boundary Correspondence Warden of the Disputed Territory, 1838-1854. MacLauchlan to Odell dated 27 March 1840 and statement by David Parker dated 28 March 1840.

<sup>194</sup> UNB Loyalist Collection. Despatches Received – 1840 – Vol. XXI. James A. MacLauchlan Reports for 1840. MacLauchlan to Harvey dated 15 and 20 April 1840.

the settlers permission to cut and remove timber provided they paid a duty of four shillings per ton. Both Coombes and Emmerson had purchased some of this timber from the settlers but, in order to get it past Maine's boom at the mouth of the Fish River, they had to pay five shillings per ton duty to Maine.<sup>195</sup> The records do not indicate if the petitions were granted but it is most likely that they were not.

Remitting the New Brunswick duty because of the Maine duty would have legitimized Maine's presence along the Upper St. John River. In a similar vein, residents of the Aroostook River submitted a petition in 1842 to bring timber to market. This too was rejected not only because they were "very lawless and disposed to resist authority" but also because most of the signatures seemed to be those of residents of the St. John River. The petition was seen as a "trick to obtain permission under false pretences to bring timber cut upon the disputed territory" to market.<sup>196</sup>

While the Provincial authorities continued to struggle with the problems of trespass timber and friction with the Maine Land Agent's representatives at Fish River, the Maine Land Agent had a different view of the situation. In his report for 1841, Elijah L. Hamlin stated that there had been no trespass committed within the disputed territory that year due to the presence of Fort Fairfield and Fort Kent. The following year, L. Bradley did not even mention trespass within the disputed

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<sup>195</sup> PANB. RS 663H. Executive Council Timber Petitions 1841. L.R. Coombes to Colebrooke dated 6 July 1841 and John Emmerson to Colebrooke dated 30 July 1841.

<sup>196</sup> PANB. RS 13. 9.a.1 – Timber Correspondence 1817-1876. Odell's comments in 1842 concerning a petition by the residents of the Aroostook River to bring timber into the province.

territory.<sup>197</sup> Clearly, this was no longer an urgent issue for Maine. However, it still was for New Brunswick. In April 1842, MacLauchlan reported that 12,000 to 15,000 tons of white pine had been cut on the Aroostook and 1,000 to 2,000 tons on the St. John River above the American armed posse at Fish River. The Americans had allowed each family to cut 50 tons on payment of five shilling per ton to the Land Agent. However, it was British settlers living along the St. John River, whose supplies had been furnished by New Brunswick merchants, who had cut much of the timber. There was no difficulty in bringing the timber to market at Saint John after they had paid the New Brunswick duty of five shillings per ton. Even with a duty of 10 shillings per ton, the timber was still saleable at a profit.<sup>198</sup>

As word was spreading in early 1842 of Lord Ashburton's mission to the United States, British residents along the St. John River were becoming increasingly dissatisfied with the timber regulations. Maine had given permission for residents in the part of the disputed territory under its control to cut timber there. The New Brunswick residents wanted the same permission.<sup>199</sup> These demands increased after the announcement of the agreement reached between Ashburton and Webster. John Simcoe Saunders, the Surveyor General, urged Colebrooke to give a speedy reply to a petition from the residents to be able to cut timber along the north side of the Upper St. John and St. Francis Rivers, "the claim to which has been relinquished by the government of the United States". Besides quieting the residents, legalization of

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<sup>197</sup> Maine State Library. L23 1:841. Report of the Land Agent for 1841 (Elijah L. Hamlin). p 23 and L23 1:842 Report of the Land Agent Dec 31, 1842 (L. Bradley).

<sup>198</sup> LAC. MG9 A2 Vol. 6&7. Vol. 6, Pt 2 1831-1842. MacLauchlan to Colbrooke dated 4 April 1842.

<sup>199</sup> Ibid. MacLauchlan to Colbrooke dated 2 February 1842

this would also reduce the cost of protecting Crown timber.<sup>200</sup> While this permission would not come until 1843, after Great Britain had ratified the Webster-Ashburton Treaty, the treaty did mark the end of a period.<sup>201</sup> While trespassing would continue, it was now a national, state or provincial problem and no longer an international one.

### **Summary.**

This study of the depredations within the disputed territory and of the cutting of trespass timber has resulted in some interesting findings. One unexpected finding was that the timber industry within the disputed territory did not follow the normal sequence of development. The model suggests that it should have progressed from local, small-scale lumbering operations to larger ones based on outside sponsorship by merchants or timber agents and finally to large scale operations. These can be classified as phase one through three operations. Instead, the first recorded operations were actually phase two ones. The industry then regressed to phase one during the period from approximately 1825 to 1837 and quickly rebounded to phase two during the winter of 1839/1839. As far as is known, this deviation from the normal manner in which the timber industry developed has not been identified before. On a parallel theme, this study has confirmed Judd's thesis of an international timber industry. This was the case since the earliest recorded

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<sup>200</sup> *Ibid.* Saunders to Colebrooke dated 13 October 1842

<sup>201</sup> Jones, Howard. To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843. Chapel Hill, NC: University of North Carolina Press, 1977. pp. 169 and 176. While the Foreign Office ratified the treaty on 13 October 1842, it was not until 7 April and 2 May 1843 that the treaty was endorsed by Parliament. Maine Historical Society. Coll. S-6767 Misc. Box 21815 Lucien Bonaparte Webster. Correspondence 1841-1845 while Commander at Fort Kent. Captain L.B. Webster to Lt. Col. B.T.E. Pierce, Commanding at Houlton Barracks, dated March 25, 1843. New Brunswick was slow to implement the changes brought about by the Webster-Ashburton Treaty. It was not until March 1843 that Colebrooke advised MacLauchlan and the other magistrates to suspend the exercise of jurisdiction in territory ceded to USA.

partnership between Baker and Nevers in 1817/1818 and continued throughout the period being studied. While the evidence for this between 1825 and 1838 is more circumstantial than factual, it would not be incorrect to suggest that, while the scale of the international cooperation may have changed, the basic nature of the business did not.

Not surprisingly, the study has confirmed that the illegal cutting of timber was a serious cause for concern throughout the period. This statement has to be tempered somewhat as there is always the question of what, exactly, was trespass timber. If it is timber that is being cut illegally, i.e. without a permit, then the views of Maine and Massachusetts differed greatly from those of New Brunswick. Prior to 1825, much of the timber being cut within the disputed territory, while trespass in the opinion of Maine and Massachusetts, was in fact legal by New Brunswick laws. This changed after New Brunswick started withholding permits starting in 1825. However, the positions reversed themselves and, while New Brunswick was not issuing permits, Massachusetts and perhaps Maine were. To complicate matters, New Brunswick allowed settlers on granted lands within the Madawaska settlement to legally cut small quantities of timber. New Brunswick also allowed timber cut in the Quebec Seigneury of Temiscouata to pass as legal timber although, strictly speaking, this was still part of the disputed territory. There was no clear and agreed definition as to what really constituted trespass timber.

Given this grey area, it is hard to gauge the magnitude of the problem. Because cutting trespass timber was illegal, it was an underground economy and no accurate records were kept of the quantities. Some information can be gleaned from

the annual reports of the Maine Land Agent and documents scattered throughout the papers of the Crown Land Office. The information is not complete and it is at times suspect as the figures may have been adjusted to support political agendas. Table 4 - Approximate Quantities of Timber Cut Within the Disputed Territory by Year (in Tons) provides the best estimate available. The cutting of trespass timber first peaked in 1825 and then sharply decreased as New Brunswick's moratorium on cutting took effect. From then until the winter of 1838/1839, the amount cut was relatively small. Any complaints lodged by either Maine or Massachusetts were more *pro forma* ones that were designed to further their territorial claims rather than ones based on actual quantities of timber cut and revenues lost. As the winter of 1838/1839 progressed, the estimates of the quantities being cut increased almost tenfold from the average of 10,000 tons to 91,000 tons. This sharp increase in quantity sparked the Aroostook War and validates the common belief that it was a "lumberman's war", at least at the local level. However, these were only estimates. Coffin, for one, believed that they were greatly exaggerated. Based on his investigations in April 1839, he estimated that "not more than 8,000 tons" had been cut.<sup>202</sup> No matter what the actual quantity was, it was sufficient reason to move Maine to take decisive action.

The most unexpected finding was the evidence of a loosely organized "lumberman's resistance" to the actions of Maine during 1839. Between early

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<sup>202</sup> Maine State Archives. George W. Coffin. Journal of Journeys into the State of Maine in the Months of May, June, July and Sept. 1838 and Apr., Jun, Aug & Sep 1839. This estimate appeared in his journal for the trip to Bangor between 20 to 29 April 1839.



February and 8 September, there were six recorded occasions when the lumbermen and/or settlers gathered to resist the Maine posse. These were:

**Table 2 Incidents in the Lumbermen's Resistance of 1839**

Incidents in the Lumbermen's Resistance of 1839	
Incident	Event
First Incident	Prior to 8 February 1839, about 300 lumbermen assembled to oppose the advance of the posse but dispersed when they saw the posse had a cannon.
Second Incident	Between 8 and 12 February 1839, a group of settlers [and lumbermen?] led by Asa Dow assembled to resist the posse but dispersed when the posse did not appear.
Third Incident	On 12 February 1839, a group of ten or sixteen lumbermen fired on the posse while trying to cover the escape of their teams.
Fourth Incident	During the night of 12 February 1839, Maine Land Agent Rufus McIntire and party were captured at Fitzherbert's by group of fifteen to eighteen men.
Fifth Incident	On 10 April 1839, a "mob" confronted Captain Thomas Bartlett on River de Chute
Sixth Incident	During the night of 7/8 September 1839, a group of between forty to sixty men raided Fort Fairfield.

Of these, the three most significant ones were the capture of McIntire and party on the night of 12/13 February, the confrontation with Bartlett at River de Chute on 10 April and the raid on Fort Fairfield during the night of 7/8 September. While the composition of each group varied, there was a commonality of leadership as shown on this table:

**Table 3 Leaders of the Lumbermen's Resistance**

The Leaders of the Lumbermen's Resistance in 1839							
Name	Incident						Remarks
	1	2	3	4	5	6	
Asa Dow		X		X			Woodstock
Punderson Beardsley				X		X	Aroostook and Woodstock
John Venning					X	X	Woodstock
John Craven						X	Woodstock
Captain William McKenzie						X	McKenzie Corner (Woodstock). Scapegoat.
Benjamin Tibbits				X		X	Tobique/Andover. Enabler?

This clearly confirms Parrott's and MacLauchlan's belief that the resistance originated in Woodstock, the closest town to the disputed territory and the home of many of the merchants who were financing the timber operations there. The capture of McIntire and the raid of Fort Fairfield had a similar *modus operandi*. In each instance, the men gathered at the home or store of Benjamin Tibbits in Tobique/Andover and they armed themselves with militia arms that were taken from storage depots in either Woodstock or Tobique. Despite these efforts, the attempts by the lumbermen to disrupt the activities of the Maine posse were futile. The lumbermen were not sufficiently well organized to effectively resist the posse. In fact, their capture of McIntire contributed to the escalation of the border crisis into the Aroostook War.

These findings help to provide context for the larger discussion of the Maine/New Brunswick border controversy. With the exception of Richard Judd's writings, the nature of the timber industry within the disputed territory has not been investigated to any meaningful degree. It is normally passed over in general, preconceived terms when the border controversy is being discussed. Yet, the timber industry had a significant effect on the progress of the dispute. It was the basis for several diplomatic exchanges between the United States and Great Britain. Most significantly, it was almost the spark that ignited the third Anglo-American war in 1839. By examining the details of the timber industry, it is possible to determine its role, both factual and fanciful, during the Maine/New Brunswick border controversy. This role, while important, has been greatly exaggerated for most of

the period. There are two exceptions to this statement. The first exception occurred in 1825 when Great Britain acknowledged the interests of Maine and Massachusetts in the disputed territory and introduced a moratorium on timber cutting. This allowed Maine and Massachusetts to expand their presence within the disputed territory. The second exception was in 1839 when, following the Aroostook War, Maine was allowed to exercise jurisdiction over the Aroostook River valley and later the Fish River valley. This permitted Maine to become firmly established in the southern half of the disputed territory, just as New Brunswick was in the northern half. This, in turn, helped to predetermine the outcome of the Webster-Ashburton treaty negotiations.

**Table 4 Approximate Quantities of Timber Cut Within the Disputed Territory by Year**

Approximate Quantities of Timber Cut Within the Disputed Territory by Year (in Tons)					
Year (Winter)	Aroostook	Quantity Seized	Upper St. John	Quantity Seized	Remarks
1817/1818	0	0	3500-3700	0	
1824/1825	15,400	0	6,584	0	Any seized was redeemed
1825/1826	? less than before		? less than before		
1826/1827	Little or no		Little or no		
1827/1828	No mention		No mention		MLA
1828/1829	?		1200 & 400- 500 saw logs	?	Most seized by British
1829/1830	?		Less than on the Restigouche		
1830/1831					
1831/1832	600-669 & 120 saw logs		670-800 & 700-900 saw logs	70-80	
1832/1833	No report. Possibly +16,000*		No report		No report by MLA
1833/1834	4,000*		2,000		All seized?
1834/1835	About 1,000				About 4,000
1835/1836	1500+. Or much as 7,000*		500+		Left over from the previous year
1836/1837	Usual amount/2,000. Or as much as 7,000*		Usual amount/1000- 1500		MLA and MacLauchlan
1837/1838	3,400		4,000		Total for both – about 10,000
1838/1839	16,000**		75,000	600-800	Aroostook War
1839/1840	No trespass timber?		No trespass timber?		According to the MLA
1840/1841	No trespass timber?		No trespass timber?		MLA
1841/1842	12 – 15,000		1-2,000		MacLauchlan

This information is based on quantities given in the Maine Land Agent (MLA) Report and documents in the New Brunswick Crown Land Office fonds.

\* George Grantham told Capt Parrott that at least 16,000 tons were cut in 1833, 1,000 tons each in 1834 and 1835, and 7,000 tons each in 1836 and 1837. The totals were low in 1834 and 1835 because of the Provincial proclamation against cutting. Maine State Archives. 2120 7-9, Diary and Letter Book of William Parrott. p. 49.

\*\*George W. Coffin estimated that only about 8,000 tons were cut along the Aroostook Valley in the winter of 1838/1839.

## **Conclusion**

The aim of this dissertation was to define and research previously understudied aspects of the Maine/New Brunswick border controversy in order to make a contribution to the historiography of this subject. A number of areas were considered and rejected as they had already been discussed in detail in the literature. However, three critical subject areas did emerge where it is possible to make some contribution to the existing literature. These are: the Defended Frontier between Maine and New Brunswick; the Exercise of Jurisdiction in the disputed territory and the cutting of Trespass Timber in the disputed territory.

The “Defended Frontier” was an obvious topic choice. Based on studies done by this author at the Master’s level and research for The Road to Canada, it was clear that this had not been a subject of academic study. The key point that has been made is that maintaining control of the line of communication, or Grand Communications Route, that ran through New Brunswick along the St. John River and Madawaska Rivers, across Lake Temiscouata and over the Grand Portage to the St. Lawrence River, was a very important part of the British plan for defending British North America. Once this fact is understood, the rationale for many other actions becomes clear. In fact, it is the underlying reason for many of the events in the history of New Brunswick. The French recognized the importance of this route, which is why they denied that present-day New Brunswick was part of Acadia after the Treaty of Utrecht in 1713. While it cannot be said that the Loyalist Regiments were settled along the St. John River following the American Revolution solely for the purpose of providing security for the route, it was certainly convenient that this

happened, and that they were allocated lands in regimental cantonments for the purpose of defence.

From this time onwards, the civil and military activities along the Upper St. John River were largely directed towards defending the route. This included the building of the Upper Posts, the establishment of the Madawaska settlement and the military settlements between Woodstock and the St. Francis River in Quebec, and later the military posts at Grand Falls, Edmundston, Dégelis and Cabano. All of this took place either in the disputed territory or on the fringes of it. Because of this imperative to defend the route, the activities of Maine and Massachusetts within the disputed territory took on a greatly increased importance, as they were seen as possible threats to the security of the route. This accounts for much of the British response to Baker's actions in 1827, the Maine sponsored Madawaska elections of 1831 and 1841, Greely's census of 1837 and the Aroostook War of 1839. Simply put, the British would not allow any action by Maine or Massachusetts that would threaten the line of communication. This was their "line in the sand" that had been granted then taken away when the United States rejected the Arbitration of the King of the Netherlands. Maine's occupation of the southern portion of the disputed territory brought on the "Garrison Period", during which time the border between the United States and British North America was anything but undefended. Great Britain finally gained control of the route with the Webster-Ashburton Treaty of 1842.

The exercise of jurisdiction was another straightforward choice for a research focus. Based on a comparison of the literature and the primary sources, it quickly

became evident that research into the exercise of jurisdiction was lacking. The United States and Great Britain had both an understanding and a misunderstanding about this as it pertained to the disputed territory. The United States appeared to be in agreement as Great Britain exercised jurisdiction in a spirit of stewardship that was acknowledged as not being prejudicial to the outcome of the boundary negotiations. The crises brought about by Baker's actions in 1827 and Maine's actions in 1831 and 1837 did not appear to change this perception. Expressions of good will were exchanged, that seemed to confirm each nation's understanding of the agreement, as each crisis was smoothed over. But, when Maine initiated the Aroostook War in 1839, this all changed. The United States essentially repudiated the agreement about the exercise of jurisdiction, at least as the British had understood it. The Forsyth/Fox Memorandum, that permitted both nations to back away from a confrontation that had the potential to ignite a third Anglo-American War, allowed a new dynamic to appear. It was agreed that Maine was allowed to exercise jurisdiction over the Aroostook River valley. However, Maine quickly extended this to include the Fish River valley.

This effectively partitioned the disputed territory along the line of the present international boundary. While each side was only "temporarily" exercising jurisdiction pending a resolution of the border controversy, it was clear that neither party would give up ground. With the disputed territory partitioned, there was little room for Daniel Webster and Lord Ashburton to manoeuvre. Thus the Webster-Ashburton Treaty, which is also known as the Treaty of Washington, of 1842 established the international boundary through the previously disputed territory.



This means that the Aroostook War was far more important than it is generally understood to be. Instead of being the comic opera “bloodless” Aroostook War or the “Pork and Beans” War, it was really the mechanism by which Maine took control of the southern portion of the disputed territory. While it was relatively bloodless, it was probably the most successful “war” conducted by the Americans against British North America and it marked the easternmost limit of American expansion.

The selection of trespass timber as the third topic was not as clear a choice at the beginning. Both the literature and the primary documents make frequent reference to this. However, as the research progressed, it was not possible to find any detailed discussion of this subject in the literature. It is a topic that has been written around but not about. There are several possible reasons for this, the most likely being the difficulty in finding any detailed information about the timber industry within the disputed territory. This information becomes easier to find once the international border was established in 1842 and the industry could be legally conducted. Timber continued to be floated down the St. John River to market but now it was all cut under licences issued by Maine, New Brunswick, Massachusetts or Quebec. From this study, it became clear that the cutting of trespass timber was not a great economic factor after New Brunswick imposed a ban on timber cutting in the disputed territory in 1825. The quantity of timber cut was relatively small until the winter of 1838-1839. Even then, Maine acted on the basis of the anticipated amount of timber that was going to be cut instead of the actual quantity, which was much smaller. Nonetheless, this was seen as a serious problem by Maine and

Massachusetts. As in many situations, the political take on a situation is often quite different from the facts. It is clear that Maine, and to a lesser degree Massachusetts, used trespass timber as a convenient reason to advance their agenda within the disputed territory. It was, of course, the *casus belli* of the Aroostook War of 1839.

Perhaps the most enlightening revelation was how these three topics were intertwined. For study purposes, they were examined separately. Yet, none of them can really stand alone. Security of the line of communications required a military presence. While some of this was provided through military posts, there were also the military settlements and provincial militia. These provided additional lines of defence along the frontier. But they did not exist in a vacuum. In order for them to function properly, they required the presence of a civil government that exercised jurisdiction in order to maintain law and order and to develop the infrastructure of the communications route. While New Brunswick was improving the Canada Road to the boundary with Quebec, Quebec was also developing its road south from the St. Lawrence River to meet it. The residents of the disputed territory needed a livelihood. While some of this was provided through farming and trade, the timber industry also provided a significant source of revenue. This led to the problem of controlling timber cutting in order to encourage legal cutting and discourage cutting trespass timber. To complicate the situation, the definition of legal versus illegal timber differed depending on who was making the definition. This led to the friction between the agents of Maine, Massachusetts and New Brunswick and, at times, between Maine and Massachusetts. To a degree, this could also be seen as a sub-set of the issue of jurisdiction.

All of this was swirling around within the disputed territory against the backdrop of the diplomatic negotiations between the United States and Great Britain that were intended to reach an agreement about the course of the international boundary. Given these disparate and often conflicting agendas, it is not surprising that it took sixty years to finally resolve the boundary question. However, the nature of the Maine/New Brunswick border controversy, and the reasons why it took so long to resolve it, cannot be fully understood without the knowledge of the background issues. While many of these background issues have already been addressed in the literature, the three topics discussed here have not been. The British were not prepared to enter into an agreement unless it would provide them with control of the line of communications. This was at odds with Maine's goal of possessing all of the disputed territory. In the interim, Great Britain worked through the government of New Brunswick to exercise jurisdiction and thereby control the territory. Maine challenged this and, in a large part, succeeded. Both sides squabbled over timber, which caused the boundary issue to heat up on a frequent basis. The contribution of this dissertation to the historiography of the Maine/New Brunswick border controversy will be the knowledge of and understanding of the importance of these three issues.

## **Annex A – Timeline of the Maine/New Brunswick Border Controversy.**

1760. The Royal Proclamation established the boundary between Quebec and Nova Scotia. The vague wording of the Proclamation created uncertainty about the actual location of the boundary.

1783. The Treaty of Paris established the boundary between the United States and British North America. The vague wording of the Treaty created uncertainty about the actual location of the boundary. It described the border as running “From the North West Angle of Nova Scotia, viz. That Angle which is formed by a Line drawn due North from the Source of Saint Croix River to the Highlands along said Highlands which divide those Rivers that empty themselves into the River St. Lawrence, from those which fall into the Atlantic Ocean, to the northwestern-most Head of the Connecticut River”. However, there was no river known as the Saint Croix. The two possible rivers were the Schoodiac and Magaguadavic, both of which emptied into Passamaquoddy Bay.

1783. Loyalist settlements were created along the lower St. John River.

1784. Western Nova Scotia became the new province of New Brunswick.

1785/1786. Acadians from the lower St. John River started to relocate to the area between Grand Falls and the Madawaska River to form the Madawaska settlement.

1791. The Upper Posts were built at Presqu’Ile and Grand Falls (Fort Carleton).

1794. The Jay (or Jay’s) Treaty (also known as the Treaty of Amity Commerce and Navigation) created a boundary commission that, in 1798, determined that the Schoodiac River was the St. Croix and traced the course of the boundary as far north as the source of the river where a marker, referred to as the Monument, was placed.

1814. Article 5 of the Treaty of Ghent created a boundary commission to establish the boundary north of the Monument.

1817/1818. The boundary commission surveyed the line north from the Monument. They could not decide on the location of the “Highlands”. The Americans claimed they were the high ground overlooking the St. Lawrence River while the British claimed that they were along the southern watershed of the Aroostook (Restook, Ristook) River. The land in between these two claims became known as the disputed territory.

1818. Nathan Baker led a small group of Americans who settled along the St. John River above the Madawaska River.

1820. Maine separated from Massachusetts and became a state. The public lands were jointly owned thus creating a checker board pattern of alternate ownership of townships in Northern Maine, included the disputed territory.

1825. New Brunswick imposed a moratorium on timber cutting within the disputed territory in response to a protest by the United States government to Great Britain. The Land Agents of Maine and Massachusetts toured the disputed territory and issued land grants within the Madawaska settlement, which the British did not recognise.

1827. John Baker and associates created disturbances within the Madawaska settlement while the “Restook Riot”, over the affair of Arnold’s cow, occurred in the Aroostook River valley.

1829. The boundary commission, formed under Article 5 of the Treaty of Ghent, could not agree on the location of the highlands. The United States and Great Britain agreed to send the question for arbitration by the King of the Netherlands in accordance with the treaty.

1831. The King of the Netherlands gave his arbitration decision. While Great Britain and the United States were prepared to accept it, Maine was not. Under pressure from Maine, the United States rejected the arbitration. In response to the arbitration, Maine conducted a census of the Madawaska settlement, incorporated it into the state of Maine and organized elections there. This created a diplomatic incident between Great Britain and the United States.

1837. Maine sent Ebenezer Greely to conduct a census of the Madawaska settlement. This created another diplomatic crisis. The New Brunswick authorities arrested Greely and made a military demonstration as a warning to Maine.

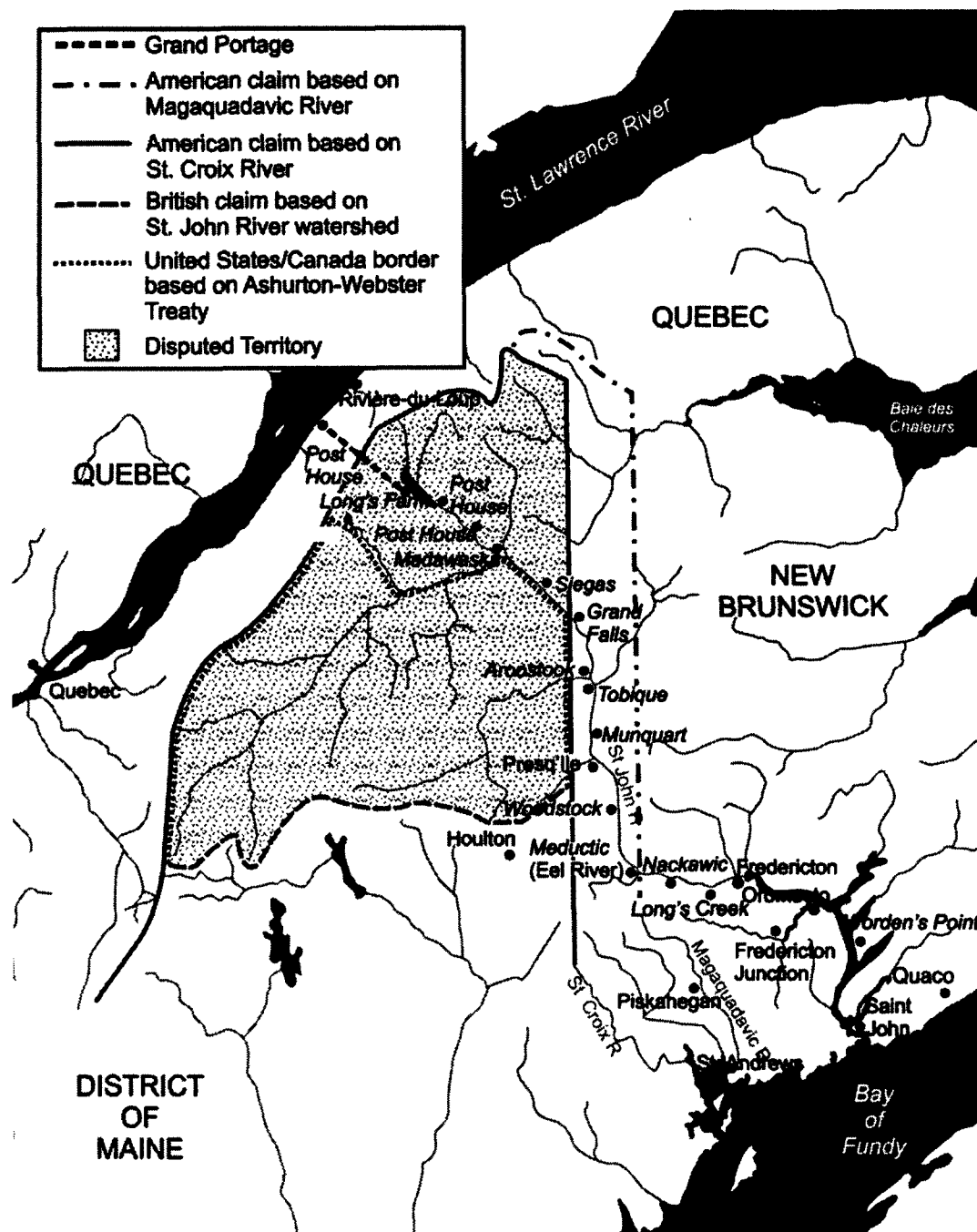
1839. Maine sent an armed posse into the disputed territory to chase off lumbermen who were cutting trespass timber. This grew into the Aroostook War, which was resolved by diplomacy. Maine was left in possession of the Aroostook River valley and then took possession of the Fish River valley. This effectively partitioned the disputed territory and brought on the “garrison period” during which military or para-military posts guarded the course of the St. John River.

1840. Maine sponsored presidential elections in the part of the Madawaska settlement controlled by the posse. This heightened the tensions along the frontier within the disputed territory.

1842. The Webster/Ashburton Treaty was negotiated and ratified, thus ending the Maine/New Brunswick border controversy. Soon afterwards, Maine and New Brunswick sponsored commissions to grant land based on a new survey of the boundary line.

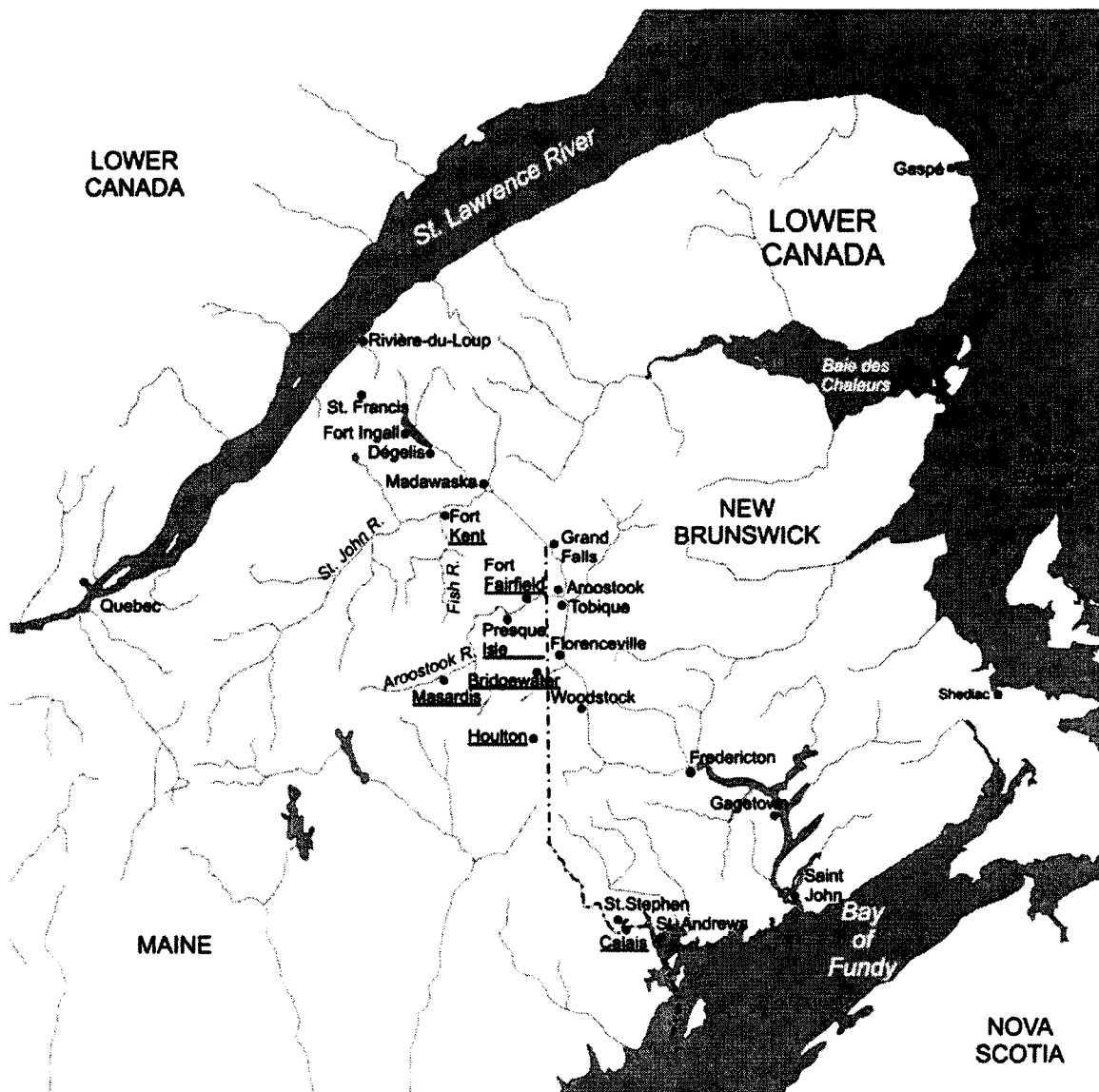
# **Annex B – Map of the Disputed Territory circa 1818.**

(Provided by the Gregg Centre and the New Brunswick Military Heritage Project. The cartographer was Mike Bechthold.)



### Annex C – Map of the Disputed Territory circa 1840.

(Provided by the Gregg Centre and the New Brunswick Military Heritage Project. The cartographer was Mike Bechthold.)



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## Curriculum Vitae

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Bachelor of Arts (History), University of Western Ontario, 1969.

Master of Arts (War Studies), Royal Military College of Canada, 2003.

Publications:

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